NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
Complainant,	:	Disciplinary Proceeding No. C9A020018
v.	:	Hearing Officer - AWH
JOHN J. KATSOCK, JR. (CRD #2497641) New York, NY	:	**Hearing Panel Decision**
Yardley, PA	:	
Respondent.	:	September 4, 2003

Formerly registered representative found liable for (1) omitting to disclose material information to customers, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rule 2120; (2) making an unsuitable recommendation to a customer, in violation of Conduct Rules 2310 and 2110; (3) making improper and baseless price predictions, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110; and (4) failing timely to appear for on-the-record interviews, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent found not liable for (1) failing to execute customer sell orders, in violation of Conduct Rule 2110; and (2) exercising discretion in customer accounts without obtaining prior written authorization from customers and acceptance from the member firm, in violation of Conduct Rules 2110 and 2510(b); and (3) interfering with an NASD investigation, in violation of Conduct Rule 2110. Respondent barred from association with any NASD member firm in any capacity for the multiple violations, and assessed costs.

Appearances:

David Newman, Esq., and Thomas M. Huber, Esq.,
for the Department of Enforcement

Martin P. Unger, Esq., for John J. Katsock, Jr.

DECISION

Introduction

On April 16, 2002, the Department of Enforcement ("Enforcement") issued a multi-cause Complaint in this matter against John J. Katsock, Jr., ("Katsock" or "Respondent"), alleging: (1) fraud in the offer and sale of securities; (2) an unsuitable recommendation made to one customer; (3) failures to execute sell orders for two customers; (4) improper price predictions made to two customers; (5) the exercise of discretion in the accounts of two customers without written authority; (6) failures to appear for on-the-record interviews; and (7) interference with an NASD investigation. The sales practice violations alleged in the Complaint involve FinancialWeb.com, Inc. ("FWEB" or "the company"), a security in which Respondent had a significant ownership interest. On June 14, 2002, Respondent filed an Answer to the Complaint and requested a hearing.

On September 27, 2002, the parties agreed to reschedule the hearing, which had been set for the middle of October 2002, to February 4 and 5, 2003. On January 13, 2003, three weeks before the scheduled hearing, Respondent's then counsel withdrew from representation of the Respondent for lack of communication from him. Respondent's present counsel entered his appearance on January 31, 2003. The hearing was held, as rescheduled, before a Hearing Panel composed of the Hearing Officer and two members of the District 9 Committee. Both parties filed post-hearing submissions.[1]

[1] On May 1, 2003, Respondent filed a motion to strike Enforcement's Proposed Findings of Fact and Conclusions of Law on the bases that: (1) the pleading is a "brief," but does not comport with the format required by Procedural Rule 9136(d); (2) Enforcement was directed to, but did not file, conclusions of law; and (3) the "brief" exceeds the 25 page limit of Procedural Rule 9266(d). Furthermore, Respondent objects to the pleading because, although the Hearing Panel did not request it, Enforcement included arguments for sanctions, while the Respondent did not address that issue. On May 15, 2003, Enforcement filed its response to the motion asserting that there was nothing improper about its pleading, Respondent has not

Background

The Respondent

John J. Katsock, Jr., first became registered with NASD as a General Securities Representative on July 19, 1994. He was registered through Pinnacle Asset Management, Inc. ("Pinnacle"), from August 1996 until September 1, 2000, when Pinnacle filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5"), disclosing that Katsock had resigned from the firm. Katsock is not presently registered or associated with a member of NASD, but he is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the By-Laws, because the Complaint is based upon conduct that occurred while he was associated with a member firm, and the Complaint was issued within two years of the effective date of the termination of his registration. Complaint; Respondent's Answer.

FWEB and Katsock's Association with FWEB

Although it was formed in 1983, FWEB was inactive during the period 1991 through 1996. CX 3, at 1.[2] In March 1997, FWEB began its business of designing, developing, purchasing, and managing a network of Internet sites under the brand

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shown how he was prejudiced by it, and the discussion of sanctions was a logical extension of its argument on the liability issues. Respondent's motion is denied. The pleadings requested by the Hearing Panel were "[b]riefs in the form of proposed findings of fact and conclusions of law." Tr. 425. That is what Enforcement filed. The request of the Hearing Panel took the post-hearing submission out of the format requirements of Rule 9136(d). A specific request for sanctions is customarily part of Enforcement's post-hearing submissions, and the Hearing Panel notes that, in his Answer, Respondent seeks dismissal of all causes in the Complaint, and therefore, that no sanctions be imposed. In any event, the imposition of sanctions rests within the sound discretion of the Hearing Panel, and therefore, there can be no prejudice to Respondent by the inclusion of a sanctions request in the post-hearing submission. The pleading does exceed the page limitation of Rule 9266(d), and Enforcement is admonished to seek permission before filing a pleading that exceeds that limitation. However, the Hearing Panel concludes that Respondent has failed to show how he was prejudiced, if at all, by the submission of a pleading that exceeded the 25 page limit.

[2] References to Enforcement's exhibits are designated as CX_; Respondent's exhibits, as RX_; and the transcript of the hearing, as Tr._.

"FinancialWeb," which provided users with financial and investment information. *Id*., at 1-2.

In the summer of 1998, Katsock first learned about FWEB. He received a business plan and unaudited financials from the Company, and learned that it was listed on the OTC Bulletin Board and was seeking financing. Tr. 281-83. In January 1999, Katsock began negotiating with the CEO of FWEB to become a consultant to the Company, and on March 10, 1999, he signed a consulting agreement with FWEB. Tr. 283-84; CX 1. On that same date, he executed a Warrant Agreement with FWEB, intended to compensate him for his prospective consulting services. The Warrant Agreement, which is a matter of public record, gave Katsock the right to purchase up to one million shares of FWEB common stock at a price of $4 per share, exercisable for a period of up to five years. CX 2. Upon exercise of the Warrant Agreement, Katsock would have beneficial ownership of 18.46% of FWEB's outstanding common stock. Tr. 298; CX 3, at 17. As more fully discussed below, on March 25, 1999, Katsock signed a letter to clients informing them of the consulting agreement with FWEB. On April 16, 1999, Katsock exercised warrants for 400,000 FWEB shares which were restricted and not freely tradable for one year thereafter. Tr. 286-89. Katsock and his immediate family also owned more than 100,000 FWEB shares for which they paid cash. Tr. 298.

FWEB was a speculative security. Respondent's Answer, ¶ 17.[3] On April 16, 1999, FWEB filed a Form 10-KSB with the SEC, reporting net losses of approximately $373,000 for the fiscal year ending December 31, 1997, and net losses of approximately

[3] Notwithstanding this admission, Katsock testified that he considered FWEB to be a growth stock. Tr. 322, 329-30. Because FWEB had no earnings, and based on its financial history and prospects, the Hearing Panel finds it to be a speculative stock. A growth stock is one that has exhibited faster than average earnings gains and is expected to continue its record of high performance. GLOSSARY OF INVESTING TERMS, NASD Regulation (2001).

$1.2 million for the fiscal year ending December 31, 1998. In that filing, the Company stated that it "is dependent upon raising additional financing in order to continue or increase the level of sales and marketing activities from that undertaken by the company to date," and that the level of sales and marketing activities that the company pursues "will be substantially impacted by the amount of additional financing, if any, that the company is able to raise." CX 3, at 13, 32. Less than four months later, on August 10, 1999, FWEB filed an amended Form 10-KSB, reporting a net loss of $1.7 million in 1998, and stating that it "expect[ed] operating losses and negative cash flows to continue for the foreseeable future." CX 4, at 17, 21. Katsock was "flabbergasted" after he reviewed the 10-KSB at the time it was filed. Tr. 293-95.

A commission run analysis shows that from March through June 1999, Katsock was primarily a buyer of FWEB stock for retail clients. Tr. 307-08; CX 5. The approximately 300,000 shares of FWEB held at Pinnacle were spread over 140 accounts. Tr. 422. About 120,000 of those shares were held in approximately 40 accounts in the name of Katsock's relatives or corporate interests. Tr. 423. Katsock had close to 300 retail customers at the time. *Id*. During that time period of March through June 1999, the closing price of FWEB was in the range of $14 to $18 per share, and Pinnacle told customers that it had "target prices" on FWEB of $30 and $40. Tr. 325-26, 366-67; CX 6. From July 1999 to June 13, 2000, the closing price was in the range of $5 to $8 per share. CX 6. On June 14, 2000, one of FWEB's largest shareholders was indicted, and, thereafter, the closing price fell from $8 to $1.41 per share which it reached on June 30, 2000. Tr. 361; CX 6.

Findings and Conclusions

I. Sales Practices Violations

Material Omissions

The first cause of the Complaint alleges that Katsock failed to disclose to nine customers that he had a financial interest in FWEB as a result of becoming a consultant to the company and receiving a warrant to purchase up to one million shares of its stock. The first cause also alleges that he failed to disclose to those customers that FWEB was a high-risk, speculative security, based on its history of financial losses and dependence on obtaining additional financing to develop its business.

1. Disclosure of FWEB as a Speculative Security

Of the five customers to whom the Complaint alleges Katsock failed to disclose that FWEB was a speculative security, that it had a history of financial losses, and that it was dependent of additional financing to develop its business, two, VW and RK, testified at the hearing. DH, who was deceased at the time of the hearing, executed a declaration that claimed unauthorized trades involving FWEB, but did not address the issue whether Katsock made disclosures about the nature of FWEB stock or the financial history and prospects of FWEB. CX 28. Similarly, the declaration of FP does not address the question of what Katsock may have, or not have, said about the nature of the security or the financial history and prospects of FWEB. CX 23. MH, who also was deceased at the time of the hearing, signed an investor questionnaire in June 2000, in which she answered "none" to the question "what representations concerning the security [FWEB], if any, were made to you?" CX 25. Without any elaboration to that one word response, there is no assurance that MH understood the meaning or scope of the term "representations," or

that she had in mind the specific question whether Katsock had said anything about the nature of the security or the financial history of FWEB.

RK testified that Katsock never discussed with her whether there were any risks involved in purchasing FWEB stock. Tr. 157. Katsock testified that he had a number of meetings, primarily in her home, and telephone calls with RK. Tr. 383-85. However, he did not specifically state that he told her that FWEB was a speculative stock or that it had a history of financial losses and a dependence on obtaining additional financing to develop its business. While he sent her, and she admitted receiving, a package of information on FWEB, including magazine articles, press releases, and internet ads extolling FinancialWeb.com, the package contained material that was dated in July and September 1999. CX 38. Accordingly, the package was sent to RK after her last purchase of FWEB stock and could not have satisfied his duty to disclose the risks of investing in the stock.

VW testified that she never had any discussions with Katsock regarding FWEB or the purchase of that stock for her accounts. Katsock testified, as he did with regard to RK, that he had many conversations with VW about FWEB, but he did not specifically state that he told her about the speculative nature of FWEB or anything about its financial history or prospects. Tr. 412-14.

The first time Katsock saw audited financial information for FWEB was after it was publicly filed with the SEC. Tr. 291. As noted above, FWEB filed the Form 10-KSB on April 16, 1999, the day RK purchased FWEB for the first time, and three weeks after VW made her first purchase. While it is true that both RK and VW have pending arbitrations against Katsock and might color their testimony, the date of the 10-KSB

filing demonstrates that Katsock could not have told VW about the negative information contained in that filing because he was not yet aware of that information. Tr. 60-61, 167. The Hearing Panel also concludes that it is more likely than not that Katsock did not advise RK of that information on the day the information became available to Katsock and RK agreed to purchase FWEB. Katsock was excited about the stock and stood to gain a great deal of money if the stock reached his target price of $30 to $40 per share. Tr. 326. He testified:

> This [FWEB] was very out of the norm for us. We had no positions in over-the-counter bulletin board stocks. This was the only one. I fell in love with it. I really believed and this was critically acclaimed up and down the street, Financial Web was best of the web in Fortune Magazine. Forbes consider (sic) it one of the ten best financial internet sites in their list three years running.
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> We really thought we were on to something that was under the radar that eventually in the marketplace we were in in '98 and '99, there was a new stock, there was (sic) companies that were being - once they were recognized, they were just - they would explode. They would take off. They would go from 10, 20, 50 to 100 and that was our goal with the stock and it was nothing else but that.

Tr. 324-25. Given his enthusiasm for the stock and his personal financial interest in it, and finding the testimony of VW and RK credible on this issue, the Hearing Panel concludes that Katsock omitted to tell VW and RK that FWEB was a high risk, speculative stock, that it had a history of financial losses, and that it was dependent on obtaining additional financing to develop its business.

To establish a violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rule 2120, Enforcement must prove that Katsock's omissions in connection with the purchase FWEB were material; [4] and made

[4] The test for materiality is "whether the reasonable investor would consider a fact important" in making an investment decision, or whether disclosure would "significantly alter…the 'total mix' of information made available." *Martin R. Kaiden*, Exch. Act Rel. No. 41629, 1999 SEC LEXIS 1396, at * 18 n. 25 (July 20. 1999); *TCS Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

with the requisite intent, i.e., scienter.[5] *See DBCC v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *18 (NBCC July 28, 1997).

Here, Katsock's omissions were clearly material. Material facts include not only earnings of a company, but also those facts that affect the probable future of a company and that may affect the desires of investors to buy, sell, or hold the securities. *See SEC v. Hasho*, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992). Failure to disclose the speculative nature of a recommended security or negative financial information about the issuer violates the anti-fraud provisions of the securities laws and NASD Rules. *Id.* at 1109.

Furthermore, the duty of fair dealing requires that stock brokers have an adequate basis for their recommendations, and those recommendations should be based on reasonable investigation. *Hanly v. SEC*, 415 F.2d 589, 597 (2d Cir. 1969); *Steven D. Goodman*, Exch. Act. Rel. No. 43889, 2001 SEC LEXIS 144, at *12 (Jan. 26, 2001). Katsock allowed his enthusiasm for FWEB to trump his duty of fair dealing with VW and RK. He knew in the summer of 1998 that the company had no operating history and was seeking financing. At that time, he had also seen the company's unaudited financial statements. He negotiated his consulting agreement with FWEB over the following six months. It is unlikely that he would do so in ignorance of FWEB's continuing financial condition. If he was unaware of the true financial posture of FWEB at the time the 10-KSB was filed in April 1999, he was under a duty to make a reasonable investigation to

[5] Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). To prove scienter there must be a showing that the respondent acted intentionally or with severe recklessness. *See M. Rimson & Co., Inc.*, 1997 SEC LEXIS 486, at *95 (Feb. 25, 1997). Recklessness has been defined as highly unreasonable conduct involving not merely simple or excusable negligence but an extreme departure from the standards of ordinary care. *See Market Regulation Committee v. Michael B. Jawitz*, No. CMS960238, 1999 NASD Discip. LEXIS 24, at **19-20 (NAC July 9, 1999) (citing *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990), *cert. denied*, 499 U.S. 976 (1991) and cases there cited). A respondent may not plead ignorance as a defense to recklessness if a reasonable investigation would have revealed the truth to the respondent. *See SEC v. Infinity Group*, 993 F. Supp. 324,330 (E.D. Pa. 1998).

determine it before recommending the stock to his customers. By failing to do so, he was reckless in recommending the stock to those two customers and, accordingly, violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120, as alleged in the first cause of the Complaint.

2. Katsock's Financial Interest in FWEB

On March 25, 1999, Katsock signed a "Dear Client" letter that had been prepared by the attorney who represented him when the consulting agreement was reached with FWEB on March 10, 1999. Tr. 379-80. The letter noted that Katsock had recently executed transactions, on behalf of the client, acquiring shares of FWEB. The letter informed the client of his consulting and financial relationship with FWEB. *Id.*; RX 1. According to Katsock, the letter was prepared "in order to disclose the consulting agreement to all my clients that had previously purchased FinancialWeb prior to that date. . ." Tr. 380.

VW purchased some of her shares of FWEB prior to March 25, 1999, and, according to Katsock's testimony, she should have received a copy of the March 25, 1999, letter disclosing his interest in FWEB. CX 9. However, VW testified that she first saw a copy of the March 25, 1999, letter when her attorney sent her a copy of it. She told the attorney that she had never before seen the letter. Tr. 65.

RK owned 3,000 shares of FWEB prior to her purchase of 3,000 shares on April 16, 1999.[6] RK testified that she does not recall receiving the March 25 letter, and that she usually saves "everything." 158, 174. She did recall receiving the 84 page packet of press releases, websites, articles, and other information about FWEB that Katsock sent to

[6] There is no evidence of the date RK purchased the 3,000 shares. However, they are noted in the "portfolio positions" section of the account in her husband's name. CX 13.

her. Tr. 158; CX 38. Katsock testified that RK called him about the letter and that he replied that he was getting warrants in lieu of compensation and was not draining any cash from the company. Tr. 381, 388.

The Complaint alleges that customer MH purchased shares of FWEB after March 25, 1999. However, the evidence shows that MH owned 2,000 shares of FWEB prior to her purchase of 500 shares on April 18, 1999,[7] Katsock testified that he sent the March 25 letter to her, that he also disclosed his affiliation with FWEB to MH in a face-to-face conversation, and that MH called him about the March 25, 1999, letter. Tr. 381. As it did with other customers, NASD staff sent a questionnaire to MH, which she signed on June 9, 2000, and returned to the staff. Tr. 237; CX 25. On the questionnaire MH answered "no" to the question whether she received any disclosure from Katsock concerning whether he has any ownership interest, position, or any other affiliation with FWEB. As noted previously, at the time of the hearing, MH was deceased.

Customer JB, purchased shares of FWEB both before and after March 25, 1999. According to Katsock's testimony then, she should have received a copy of the letter disclosing his relationship with FWEB. However, JB testified that she does not remember receiving or seeing the March 25 letter. Tr. 196-97. Katsock testified that he had regular meetings with JB and that he disclosed to her his interest in FWEB. Tr. 339, 382-83.

Customer AK's business was close to Katsock's office, and he visited Katsock's office weekly. Tr. 79. AK testified that Katsock told him that he owned a million shares

[7] There is no evidence of the date MH purchased the 2,000 shares. However, they are noted in the "portfolio positions" section of her statement for the period ending April 30, 1999. CX 24.

of FWEB and that he controlled the company. Tr. 77, 128. He also signed a declaration stating that Katsock owned those shares through a warrant agreement. CX 21.

Pursuant to a discretionary agreement, Katsock purchased shares of FWEB for customer KH both before and after March 25. Katsock testified that he told KH over the telephone of his relationship with FWEB, and that he believes he sent the March 25 letter to her as well. Tr. 379. KH did not testify at the hearing, but she signed an investor questionnaire and declaration, stating that Katsock did not disclose any personal interest or affiliation with FWEB. CX 33, 34.

From the nature of the letter and Katsock's enthusiasm for FWEB's prospects, the Hearing Panel concludes that it is more likely than not that Katsock sent letters to all his clients who had previously purchased FWEB shares. Touting his affiliation with the company would not be inconsistent with his enthusiasm for the company, his recommendation of the stock, and his own investment in it. However, because the letters were sent by regular mail, there is no evidence to prove that all customers received them. There is also no reason to believe that those customers who stated that they did not receive them, or could not remember receiving them, were not candid in saying so. On the other hand, correspondence in 1999 may not easily be remembered at a hearing almost four years later, and there is no indication that MH or KH were specifically asked whether they had received the March 25 letter from Katsock. In any event, the Hearing Panel concludes that Enforcement has not proved by a preponderance of the evidence that Katsock did not disclose his affiliation with FWEB to customers VW, RK, MH, JB and AK.

Customers FP, DH, and JE all bought FWEB stock after Katsock signed the March 25 letter, and, therefore, would not necessarily have received that letter which was drafted for the benefit of clients who had purchased those shares prior to the time Katsock entered into the consulting agreement with FWEB. However, Katsock was obliged to have notified those customers of his affiliation with FWEB, by some means, *before* they purchased those shares, in order to comply with his responsibility to notify customers of material information.

FP's declaration specifically states that Katsock told him that he was "involved with FWEB," "knew people," and had inside information. CX 23. It is clear that FP knew of Katsock's relationship and financial interest in FWEB.

Katsock testified that he was not DH's registered representative at Pinnacle, although his registered representative number is on DH's account, because Katsock gave the account to a younger broker.[8] Katsock stated that Pinnacle often gave joint representative numbers to younger brokers. Tr. 348-49. In June 2000, DH signed a declaration, prepared by the staff, stating that Katsock "never disclosed any personal ownership interest or affiliation with FWEB." CX 28. The declaration admits that DH opened his account at Pinnacle on the recommendation of an "associate" at Pinnacle. As noted above, DH was deceased at the time of the hearing. Katsock testified that DH's actual broker at Pinnacle handled the account and that Katsock spoke to DH only when he had a complaint. Tr. 349. The questionnaire does not indicate whether anyone else at Pinnacle, including his actual broker, disclosed to DH Katsock's involvement with

[8] Katsock also argues that DH's declaration should be given no weight because it erroneously states that DH's Settlement Agreement with Pinnacle prohibits DH from disclosing the terms or details of the settlement with any regulatory agency. Tr. 260. However, there was no advantage for DH to so state, and, even if the statement is erroneous, the statement does not affect any substantive issue in this case.

FWEB. Accordingly, there is no proof that Katsock was DH's representative, and therefore, under a duty to make the disclosure of his financial interest in FWEB to DH.

Pursuant to discretionary authority, Katsock purchased shares of FWEB for customer JE on March 26, 1999. JE did not testify at the hearing, but he signed a declaration stating that Katsock never disclosed any personal affiliation with, or ownership interest in, FWEB. At the hearing, Katsock was not asked whether he disclosed to JE his interest in FWEB.

The Hearing Panel concludes that Enforcement has not proved, by a preponderance of the evidence, that Katsock failed to disclose to FP his relationship to, and interest in FWEB. There is also no proof that Katsock was under a duty to make that disclosure to DH. Finally, even if the Hearing Panel were to find that Katsock did not make the disclosure to JE, there is no evidence that he did so intentionally or recklessly. Katsock believed in the company and the stock. Tr. 324-26. His relationship with the company and his ownership of the stock were consistent with his interest in selling the stock to his customers.

Suitability of Transactions for VW

VW is a music educator who, in 2001, at the age of 81, retired from her teaching position at a private school. In June 1997, she met with Respondent's father, John Katsock, Sr. ("Senior"), to obtain financial advice. Tr. 25-27. She told Senior that she wanted to get out of the stock market, and that she was "too old to take any chances" and wanted more conservative investments. Tr. 30-31. Katsock came into the meeting, introduced himself, and left a few minutes later. Tr. 31. VW felt "uncomfortable" about Katsock, and, as a result, did not return to see Senior until one year later. Tr. 31-32. At

that time, and thinking that she was dealing only with Senior, VW opened two accounts at Pinnacle: a personal account and an IRA account. Tr. 32-33. In December of that year, she opened a Roth IRA account. Tr. 40.

At the time she opened her first two accounts at Pinnacle, VW transferred her existing securities account, worth approximately $243,000, from another broker-dealer to Pinnacle. The account had been invested in annuities and blue chip stocks, mainly bank stocks. Tr. 28-29. Her husband had died, and her income consisted of income from teaching at a private academy, social security, and a pension of less than $100 per week from her public school teaching career. Tr. 29. The new account forms for VW indicated that her annual income was approximately $40,000, her net worth was approximately $400,000, her investment objectives for the personal and IRA accounts were income and growth, and her investment objective for the Roth IRA account was growth. CX 8-10.

At the time she opened her accounts at Pinnacle, VW assumed that Senior would be her financial advisor. Tr. 32. She was "sick" when she saw Katsock's name on confirmations, but because she had no problem dealing with Senior and feared that she would have to resort to legal action to remove Katsock as her representative, she did nothing to remove Katsock as her representative and continued to deal directly with Senior. Tr. 34-35.

VW's account statements showed, and Katsock admitted, that on numerous occasions he purchased FWEB stock for VW. Tr. 330; CX 8-10. In her IRA account, he purchased 500 shares at $19.50 on February 2, 1999; another 500 shares at $15.23 on February 10, 1999, and an additional 500 shares at $15.75 on May 18, 1999. The

purchases of FWEB in that account constituted approximately 23% of her net monthly equity in February 1999, and 31%, in May 1999. In her personal account, he purchased 1,500 shares at $14.00 on March 25, 1999, and another 500 shares at $19.44 on April 19, 1999. Those purchases constituted approximately 15% of her net monthly equity in her personal account during March 1999, and 22%, during April 1999. In her Roth IRA account, Katsock purchased 500 shares at $19.44 on April 19, 1999, representing approximately 20% of her net monthly equity in that account. CX 8-10. In all, VW's accounts show total purchases of 4,000 shares of FWEB. As of the end of July 2000, those shares of FWEB were priced at $0.81. *Id.*

VW testified that she never had any discussions with Katsock regarding FWEB or the purchase of FWEB for her accounts. Tr. 35-36. Katsock testified that he had numerous conversations with her and spoke to her specifically about FWEB. Tr. 412. He does not claim, however, that VW initiated the purchases of FWEB on an unsolicited basis. Katsock did not have written authority to exercise discretion in her accounts. Tr. 416. Regardless whether he used his own discretion or discussed the purchases with VW, he had an obligation to ensure that those purchases were suitable.

Conduct Rule 2310(a) provides that, in recommending a purchase of a security to a customer, a broker "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and financial situation and needs." The suitability rule requires more than mere risk disclosure. A broker must ensure that the customer understands the risks involved in a recommended securities transaction. *DOE v. Chase*, No. C8A990081, 2001 NASD Discip. LEXIS 30 at* 17

(NAC Aug. 15, 2001) (citing *Patrick G. Keel*, No. 31716, 1993 SEC LEXIS 41, at **9-13 (Jan. 11, 1993)). "A customer's investment objectives … are but one factor to consider in determining whether the broker's recommendations were suitable for the customer. Furthermore, a broker cannot rely upon a customer's investment objectives to justify a series of unsuitable recommendations that may comport with the customer's stated investment objectives but are nonetheless not suitable for the customer, given the customer's financial profile." *Id*. Even if a customer seeks to engage in highly speculative or otherwise aggressive trading, a broker is under a duty to refrain from making recommendations that are incompatible with the customer's financial profile. *DOE v. Jack H. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *10 (NAC Dec. 3, 2001), *aff'd*, 2003 SEC LEXIS 338 (Feb. 10, 2003). In particular, representatives must not recommend purchases that lead to unsuitably high concentrations in the customer's account of a particular security or group of securities that are speculative. *See, e.g., Clinton Hugh Holland*, Exch. Act Rel. No. 37991, 52 S.E.C. 562, 564 (Dec. 21, 1995), *aff'd*, 105 F.3d 665 (9th Cir. 1997) (table).

A concentrated position in a high risk, speculative security such as FWEB is clearly not a suitable investment for a 79-year old widow with a modest income. Regardless of her expressed interest in "some growth," Katsock was obliged to avoid recommending speculative investments. He should have recommended investments that were more conservative, given her financial profile. Instead, Katsock was responsible for investing almost $66,000, more than 27% of the value of her three securities accounts, in FWEB stock during the period February through May 1999.

Katsock's portrayal of VW as a more sophisticated investor than she let on is unpersuasive. The fact that she "readily used the terms 'Roth IRA' and 'growth' and knew exactly how many transactions had taken place in her accounts" (Respondent's Proposed Findings of Fact, at 5), does not make her a sophisticated investor. *See Stein*, 2003 SEC LEXIS, at *14. Moreover, that contention contradicts Katsock's testimony that he was told that she had to stop teaching and driving because of the onset of Alzheimer's disease. Tr. 413. If he had any doubt about her mental state, he had even greater reasons to assure the conservation of her financial resources. In any event, regardless whether VW was or was not "sophisticated," Katsock's obligation was to recommend only suitable investments, and the FWEB purchases were clearly not suitable for VW. Katsock thus violated Conduct Rules 2310 and 2110 as alleged in the second cause of the Complaint.

Improper Price Predictions

The fifth and sixth causes of the Complaint allege that Katsock made improper price predictions to customers FP and DH. The fifth cause alleges that in recommending FWEB to FP, Katsock stated that its then current price of approximately $15 per share would "rise to $27 per share within a couple of weeks" and "would probably rise to $40 in the long term." The sixth cause alleges that Katsock purchased shares of FWEB for DH at $13.01, telling him that FWEB was "a minimum $30-40 stock." Katsock testified that he told FP that he had a "target price of 30" and perhaps more for FWEB, but that he did not say when he thought FWEB would hit the target. Tr. 367. He believed that he moved his target price for FWEB to $40 eventually. Tr. 325. Based on Katsock's

admissions in his testimony, the Hearing Panel finds it more likely than not that he made the statements to FP and DH as alleged in the Complaint.

Generally, predictions of specific and substantial increases in the price of a speculative security within a relatively short period of time are fraudulent within the meaning of Section 10(b) and Rule 10b-5. Likewise, predictions of substantial increases in the price of non-speculative securities that are made without a reasonable basis are fraudulent. *See, e.g., In re Donald A. Roche*, Exchange Act Release No. 38742, 1997 SEC LEXIS 1283, at * 6 (June 17, 1997). With respect to a speculative security, such statements are considered per se fraudulent because, in a free market, it is impossible to predict with any measure of confidence the timing and amount by which a speculative security will increase in price. Thus, when a respondent makes such a price prediction in connection with the purchase or sale of a speculative security, no further proof of scienter is required. Whether the prediction is made with respect to a speculative or non-speculative security, materiality is presumed because it is obvious that any prediction of a substantial increase in the price of a security would affect a reasonable investor's decision to buy, hold, or sell a security.

It is irrelevant that Katsock expressed his price predictions as a matter of opinion or possibility rather than as a guarantee. *SEC v. Hasho*, 784 F. Supp. 1059, 1109 (S.D.N.Y. 1992). *See also, e.g., In re Richard J. Puccio*, No. 3-8438, 1995 SEC LEXIS 1724, at * 20 (July 10, 1995), *aff'd*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2897 (Oct. 22, 1996). Nor is it relevant to a finding of fraud that Katsock expressed the price prediction as a range rather than a precise amount. *Alfred Miller*, 43 S.E.C. at 235

(finding predictions of stock increases ranging from 50 cents to 80 cents and $1.00 or $1.50 by year-end were fraudulent). *See also SEC v. Hasho*, 784 F. Supp. at 1107-09. Based on the foregoing, the Hearing Panel concludes that Katsock violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rule 2120 by making baseless and improper price predictions. Conduct violative of Rule 10b-5 and Conduct Rule 2120 also violates Conduct Rule 2110.[9]

Failures to Execute Sell Orders

The third cause of the Complaint alleges that Katsock refused to execute AK's instruction to sell "approximately 14,900" shares of FWEB, stating that he controlled the share price and would not let AK sell the stock. The fourth cause of the Complaint alleges that Katsock refused FP's instruction to sell shares of FWEB, stating that a sale would hurt the overall share price for FWEB.

Notwithstanding the allegation in the Complaint, AK testified that, at the end of March 1999, he called Katsock's office to sell *7,000* of his 17,050 shares of FWEB. According to AK, an associate at Pinnacle who answered the phone said that Katsock would have to be called first, and that Katsock would not be back in the office for a few days. Tr. 91. The associate reportedly told AK that Katsock said "nobody can f___ with my stock." *Id*. Two days later AK met with Katsock in his office. Katsock advised AK to keep the stock until it rose to $30, after which Katsock said that he would sell whatever amount AK wished to sell. Tr. 92-93. AK then decided to keep the stock.

AK testified that, approximately three months later in June 1999, he received a margin call and *was* able to sell 7,000 shares of FWEB through Katsock. Tr. 93. In June

[9] *See generally DBCC No. 9 v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *16-23 (July 28, 1997); *Market Regulation Committee v. Kevin Eric Shaughnessy*, No. CMS950087, 1997 NASD Discip. LEXIS 46, at *24-27 (NBCC June 5, 1997).

and July 1999, AK also sold 8,000 shares of FWEB from his family trust account with Katsock at Pinnacle, apparently without any problem. CX 19.

The Hearing Panel concludes that Enforcement failed to prove by a preponderance of the evidence that Katsock failed to execute a sell order from AK. Katsock denied the allegation and stated that AK was always a buyer of FWEB until June 1999. Tr. 407-08. Even if AK's testimony were to be credited, there is no evidence that Katsock refused to sell stock. AK's testimony only shows that Katsock convinced him not to sell stock in March 1999. In any event, it does not appear likely to the Hearing Panel that AK sought to sell 7,000 shares of FWEB only some two weeks before he bought FWEB convertible notes for $500,000. Moreover, AK had no problem selling the identical amount of 7,000 shares in order to meet a margin call in June, or to sell 8,000 shares from the family trust account at about the same time. Finally, there is no explanation in the record for the discrepancy between the allegation in the Complaint that AK ordered the sale of 14,900 shares of FWEB in March 1999, and his testimony that he sought to sell only 7,000 shares at that time. Accordingly, the Hearing Panel will dismiss the third cause of the Complaint.

With regard to the fourth cause of the Complaint, FP's declaration asserts that, at some unspecified time in 2000, he tried to sell an unspecified number of shares of FWEB, and that Katsock refused to sell any because a sale "would hurt the overall share price for FWEB." CX 23. Katsock denied the allegation, alleging that FP and Katsock's cousin were "having a rift" at the time FP signed the declaration, and that FP "had it out for my cousin and for myself."[10] Tr. 353.

[10] FP's relationship with Katsock and his cousin is more fully discussed below.

In 2000, FP held 3,500 shares of FWEB in his account at Pinnacle with Katsock. CX 22. There were no sales of FWEB in his account during that year. *Id*. However, FP's declaration does not identify any specific order to sell shares of FWEB or any specific refusal to sell. Moreover, FP's statement that Katsock refused his sell order because he was concerned that a sale of FP's 3,500 shares would affect the price of FWEB is not credible. Katsock had approximately 100 other customers who held a total of 170,000 to 180,000 shares of FWEB, and his family members held another 120,000 to 130,000 shares in accounts at Pinnacle. Tr. 422-23. According to Katsock's testimony the size of the public float for FWEB was approximately five and one half million shares. There is no evidence of trading volume in FWEB nor is there any other evidence to show that a sale of 3,500 shares would have any significant affect on the price of the stock.

In the absence of testimony from FP, the Hearing Panel is unwilling to give the generalized, unsubstantiated assertions in his declaration significant weight, particularly in light of Katsock's uncontradicted testimony about personal matters that have arisen between FP and himself.[11] The Hearing Panel concludes that Enforcement failed to prove by a preponderance of the evidence that FP instructed Katsock to sell, and Katsock refused to sell, shares of FWEB stock during the year 2000. Accordingly, the Hearing Panel will dismiss the fourth cause of the Complaint.

Exercise of Discretion Without Written Authority

The seventh and eighth causes of the Complaint allege that Katsock, pursuant to verbal authority, exercised discretion in the accounts of RK and VW without having obtained prior written authorization from those customers and without obtaining prior written acceptance of the accounts as discretionary by his employer member firm, in

[11] *See also* n. 13 regarding the weight to be given FP's declaration.

violation of NASD Conduct Rules 2110 and 2510(b). The Hearing Panel concludes that, regardless of the credibility of the customers' or Katsock's testimony, Enforcement has failed to prove that Katsock violated Conduct Rules 2110 and 2510(b) as alleged in the Complaint. It is clear from the record that Katsock was not given written discretionary authority by those two customers. However, it is equally clear that he was not given oral discretionary authority either. Moreover, there is no evidence that he exercised any discretionary authority over the accounts.

VW testified that she communicated only with Senior. Tr. 35-36, 43-44. There is no evidence that Senior gave, or had authority to give, his son discretionary authority over VW's accounts. If VW's testimony is accepted, Katsock did not have any discretion in trading for VW's accounts. On the other hand, if Katsock's testimony is credited, he had numerous meetings with VW and spoke to her about every trade. Tr. 413-14. Accordingly, either the trades were unauthorized, in VW's view, or they were expressly authorized, in Katsock's. Neither one, however, supports the charge that they were effected through oral, and without written, discretion.

RK never signed any agreement giving Katsock discretion over her accounts, and Katsock denied that he ever exercised any discretion over her accounts. Tr. 387. According to her testimony, the first time she spoke to Katsock was when he called her and said he would like to buy FWEB for her. She then agreed. Tr. 154. Her complaint was that when she told him to stop buying the stock as the price was declining, he continued to buy it. Tr. 156, 159. If her testimony is credited, those purchases may have been unauthorized, but they were not made as the result of the exercise of discretion as

charged. Accordingly, the Hearing Panel will dismiss the seventh and eight causes of the Complaint.

II. Other Violations

Failures to Appear for Testimony

As part of a routine examination of Pinnacle in August 1999, NASD staff noticed a significant number of transactions in FWEB. In reviewing the Form 10-KSB that had been filed with the SEC, the staff noticed Katsock's consulting agreement with FWEB. As a result, it began an investigation to determine whether Katsock's relationship to FWEB had been disclosed to Pinnacle customers. Tr. 210-14. As part of that investigation, the staff sent investor questionnaires to a number of Katsock's customers, seeking information regarding whether or not Katsock made certain disclosures to those customers. A number of those questionnaires were returned by the customers in April, June, and July 2000. CX 14, 17, 25, 27, 30, 33.

On July 14, 2000, pursuant to Procedural Rule 8210, NASD staff sent Katsock a letter requesting his appearance for an on-the-record interview ("OTR") in the Philadelphia District Office on July 24, 2000, to testify concerning four matters, including his involvement with FinancialWeb.com, Inc.[12] CX 35. Katsock received the letter requesting him to appear on July 24, but he did not appear on that date for the OTR. Tr. 358, 361.

On July 27, 2000, pursuant to Procedural Rule 8210, NASD staff sent Katsock another letter, again requesting his appearance for an OTR in the Philadelphia District Office on August 22, 2000, and to testify on the matters specified in the July 14, 2000,

[12] The letter noted that the request was the third for Katsock's appearance in the matters under review. However, the Complaint alleges only a failure to appear in response to this request and one other later request.

letter. CX 36. Katsock received the letter, requesting him to appear on August 22, but failed to appear for that OTR. Tr. 358, 361.

At the hearing Katsock testified that the indictment of one of FWEB's largest shareholders occurred in June 2000, and that consequently, he did not think he "could have helped myself in any way, shape, or form by talking at the time on the advice of counsel." Tr. 361. He continued: "I didn't appear at that time, right, until we knew what was going on." *Id.*

In January 2001, Katsock received a Wells Notice from NASD, informing him that NASD had made a preliminary decision to bring an enforcement action against him. Tr. 358-59. In April 2001, Katsock appeared in the Philadelphia District Office and testified concerning FWEB. Tr. 360.

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power. *See Joseph G. Chiulli*, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *DOE v. Benz*, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003), *appeal docketed*, No. C01020014 (NAC Mar. 31, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function."). A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110. *See Dep't of Enforcement v. Baxter*,

No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000); *see also Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

By failing to appear for OTRs on two occasions, Katsock violated Procedural Rule 8210 and Conduct Rule 2110. The fact that he appeared and testified nine months later, and only after having received a Wells Notice, is not a defense to the violations. In order not to impede NASD investigations, Rule 8210 requires prompt cooperation when a request for information is made. *Brian L. Gibbons,* Exchange Act Rel. No. 37170, 1996 SEC LEXIS 1291 (May 8, 1996), *aff'd*, 112 F.3d 516 (9th Cir. 1997); *see also, Dep't. of Enforcement v. Paul John Hoeper,* No. C02000037 (NAC, Nov. 2, 2001) (imposing a bar against a representative who failed to respond to two 8210 requests and provided requested information only after a complaint was filed nine months later).

While reliance on the advice of counsel may mitigate misconduct, it is not a defense to a failure to respond to NASD requests for information. *Dep't. of Enforcement v. Bret Steinhart*, No. FPI020002 (NAC August 11, 2003) (citations omitted). Moreover, Katsock's purported reliance on counsel was not reasonable. He failed to show that he received advice that his refusals to comply with requests for his testimony were legal. *Id*.

Interference with an NASD Investigation

The Complaint alleges that Katsock twice interfered with the investigation into his sales practices by inducing customers not to cooperate with NASD by returning investor questionnaires to NASD. First, the Complaint alleges that FP said that Katsock would "take care of me," if FP did not cooperate with the NASD investigation. Second, the Complaint alleges that Katsock told AK that he would pay for a convertible note,

issued by FWEB, which AK had purchased two months earlier, if AK did not cooperate with the NASD investigation.

FP, a former sheriff, jointly owned a car dealership with Katsock's cousin. FP was interviewed over the phone by an NASD examiner. Tr. 263. After a written declaration was prepared by the staff, FP signed it on August 5, 2000. CX 23. In the declaration, FP stated that Katsock said he would "take care of me," if he did not cooperate with the regulatory authorities. However, FP did not testify at the hearing, purportedly because, in light of his business relationship with Katsock's cousin, he would face a "potential dilemma" should he have to appear to testify against Katsock. Enforcement's Proposed Findings of Fact and Conclusions of Law, at 28.

Katsock testified that he and his father visited the car dealership for the purpose of discussing a real estate transaction they were going to consummate with Katsock's cousin. Tr. 362-63. When Katsock and his father arrived at the dealership, FP began to complain about losses on stocks he held in his account with Katsock at Pinnacle. According to Katsock, FP demanded $150,000 in return for a promise not to return a questionnaire sent to him by NASD inquiring about Katsock. Tr. 363-65. Katsock testified that he told FP that the questionnaire "went out to everybody," and that he "could care less" if FP sent it back to NASD or not. Tr. 365.

There is no evidence of what the words "take care of me" mean, as set forth in FP's declaration. Moreover, in the absence of explanatory testimony from FP, his unsupported declaration is insufficient to overcome Katsock's version of the events in question.[13] Under the circumstances, the Hearing Panel cannot conclude that

[13] The Hearing Panel cannot give any greater weight to FP's declaration than it can to Katsock's testimony that contradicts the declaration. FP, a former law enforcement officer, was not unavailable to testify about

Enforcement proved by a preponderance of the evidence that Katsock interfered with the NASD investigation by virtue of his conversation with FP at the car dealership.

Customer AK owns a "coffee shop" in Manhattan near Katsock's office.[14] Tr. 69. When Katsock was in the coffee shop in November 1998, he solicited AK's securities business and told AK about a stock called Axxess, Inc., the predecessor in name to FWEB. AK bought 5,000 shares of Axxess in his then existing brokerage account. AK then transferred his account to Katsock at Pinnacle and bought more shares of Axxess and FWEB. At the end of January 1999, AK owned 15,200 shares of FWEB in his personal account, with a market value of $334,400. CX 18. The total value of equities and options in that account at the end of January 1999 was over $2.1 million. AK also was the trustee for a family trust account at Pinnacle, for which Katsock was the account executive. At the end of April 1999, that account had a total value of over $800,000, including 17,050 shares of FWEB valued at more than $268,000, which had been transferred into the trust account from AK's personal account. Tr. 101.

AK testified that, at the end of March 1999, he purchased two FWEB convertible notes through Katsock, each for $250,000. Tr. 94. AK sold one of the notes at a profit in

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the serious charge of interference with an investigation. He faced no greater "dilemma" with respect to Katsock's cousin by testifying at the hearing than he did by signing a declaration that asserts a number of other allegations against Katsock's interests. Moreover, the declaration is inconsistent with the evidence in his account statements. For example, the declaration states that the approximate net equity in the account was between $300,000 and $400,000. However, his January 2000 account statement shows a balance of $599,915. CX 22, CX 23. His declaration states that he was "primarily interested in secure 'blue-chip' securities," but the account statements show that he was purchasing a number of technology stocks and calls on margin. *Id.* The declaration asserts unauthorized and excessive trading by Katsock, but the Complaint does not charge Katsock with such violations. Finally, there is no corroboration for FP's assertion that Katsock would reward him if he did not cooperate in the investigation. As noted later, there were a number of other customers who cooperated with the investigation.

[14] Katsock described AK's business as a restaurant in a hotel on Lexington Avenue that backed up to Katsock's Park Avenue office. Tr. 334.

late 1999.[15] Tr. 95, 406-07. Katsock testified that he had a buyer for both notes, but that AK wanted to keep the second. Tr. 406. On the other hand, AK testified that Katsock was not able to buy the second note until several months later when he called AK and offered to pay for the note if AK would not cooperate with NASD by returning a questionnaire. Tr. 99-100. Responding to that testimony, Katsock testified that AK called him about the questionnaire, saying that if Katsock did not buy back some 80,000 shares of FWEB at $5 per share, AK would return the questionnaire to NASD. Tr. 408-09.

The Hearing Panel concludes that Enforcement did not prove by a preponderance of the evidence that Katsock interfered with the investigation into his sales practices by offering to purchase a note or stock from AK in return for his non-cooperation in the investigation. AK's testimony must be weighed in light of the fact that (1) he is a claimant in an arbitration pending against Katsock (Tr. 112-13), and (2) he signed the questionnaire on June 29, 2000, two weeks after a major FWEB shareholder had been indicted, and one day before the price of FWEB declined to $1.50 per share. It would not make sense for Katsock unconditionally to offer to buy a note or stock at a price that had been rapidly declining to $1.50, or to agree to buy 80,000 shares at $5 in order to avert the return of a single NASD questionnaire.[16] NASD sent out 140 Investor Questionnaires

[15] AK's testimony was not clear as to whether he sold a note or whether he converted the note to stock and sold the stock. Tr. 99-100, 130-31. There is no documentary evidence of the purchase or the sale of either note that he bought or of the stock into which the notes may have been converted. AK's declaration states that he converted the second note to 88,264 shares of FWEB common stock, and that both notes were to mature in March 2000. CX 21.

[16] There is no evidence that shows the date the questionnaire was sent to Katsock's customers. According to AK's declaration, he converted the second note to stock before the March 2000 maturity date of the note. However, the declaration also states that Katsock offered to pay for the second *note* if AK did not talk to NASD. The declaration does not date that purported conversation. As a result, the Hearing Panel cannot

to Katsock's customers, of which 30 were returned. Tr. 214-15. There is no evident reason why Katsock would attempt to dissuade only AK, or even AK and FP together, from returning a questionnaire that many others would be returning to NASD. Accordingly, the Hearing Panel will dismiss the tenth cause of the Complaint.

Sanctions

For reckless misrepresentations or material omissions of fact, the NASD Sanction Guidelines recommend a fine of $10,000 to $100,000 and a suspension for a period of 10 business days to two years. In egregious cases, the Guidelines recommend consideration of a bar. NASD SANCTION GUIDELINES, at 96. For unsuitable recommendations, the Guidelines recommend a fine of $2,500 to $75,000, and a suspension for a period of 10 business days to one year. In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar. *Id.*, at 99. Finally, for failing timely to respond to requests made pursuant to Procedural Rule 8210, the Guidelines recommend a fine of $2,500 to $25,000, and a suspension of up to two years. *Id.*, at 39.

The omissions to tell customers that FWEB was a speculative security with a history of financial losses and a dependence upon additional financing to develop its business, the improper and baseless price predictions about FWEB stock, the unsuitable recommendation of FWEB to a customer, and failure for nine months to appear and testify in response to a request made during an NASD investigation all arose from a single course of conduct. Katsock acted to further his own financial interests in FWEB and then frustrated an investigation into his actions. Under such circumstances, a single set of sanctions may be appropriate and effective to achieve NASD's remedial goals.

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determine when it was supposed to have taken place or if it was supposed to have taken place before or after AK signed the questionnaire. CX 21.

See, e.g., Dep't. of Enforcement v. Respondent Firm 1, No. C8A990071 (NAC Apr. 19, 2001). Accordingly, the Hearing Panel has considered the totality of Katstock's actions in assessing sanctions for his conduct.

Katsock fell in love with a stock, pursued a financial interest in the company, and then sold so much of its stock to his customers that NASD investigators were prompted to look into his relationship with the company. In making those sales of FWEB stock, he recklessly omitted to tell two customers of the risks inherent in investing in the stock, and made baseless price predictions to two others that a stock, trading between $13 and $15 per share, would rise to $30 or $40. His recommendation that a 79-year old widow with a modest income take a concentrated position in a high risk, speculative security was clearly unsuitable and not motivated by consideration of her best interests. Finally, Katsock's failure to appear and testify during the investigation, until an enforcement action was threatened against him, delayed and frustrated the staff's attempt to resolve the issues raised during its examination of his sales practices. Had he timely appeared in response to the staff's requests, the staff would have been able to re-interview customers whose statements and answers to the investor questionnaire Katsock challenged. Two of those customers eventually died before the hearing, and others declined to testify. Explanatory statements from those customers, responding to Katsock's view of the facts, would have been helpful in resolving a number of issues that were raised in this proceeding.

Given the totality of his actions, the Hearing Panel finds that Katsock should be barred for his multiple violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rules 2310, 2120, and 2110, and

Procedural Rule 8210.[17] Enforcement also seeks an order of restitution for customers VW, RK, and JB. However, the Hearing Panel declines to issue such an order because those customers have pending arbitrations against Katsock. For the Hearing Panel to order restitution in this case would be to risk inconsistent findings with those arbitrations. Finally, Katsock will be assessed costs of $3,338.15, consisting of a $750 administrative fee and a $2,588.15 transcript fee.

Ultimate Conclusion

John J. Katsock, Jr. is barred from association with any NASD member firm in any capacity for (1) omitting to disclose material information to customers, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rule 2120; (2) making an unsuitable recommendation to a customer, in violation of Conduct Rules 2310 and 2110; (3) making improper and baseless price predictions, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110; and (4) failing to appear for on-the-record interviews, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Katsock is also assessed costs of $3,338.15, consisting of a $750 administrative fee and a $2,588.15 transcript fee.

Causes three and four of the Complaint, alleging failure to execute customer sell orders, in violation of Conduct Rule 2110; causes seven and eight of the Complaint, alleging the exercise of discretion in customer accounts without obtaining prior written authorization from customers and acceptance from the member firm, in violation of

[17] In the absence of the securities fraud charges, the Hearing Panel would have barred Katsock for failures to respond timely to the requests to testify pursuant to Procedural Rule 8210. Because Enforcement sought a bar for Katsock's misconduct, it declined to seek a fine. The Hearing Panel also finds that imposition of a fine against Katsock is not necessary to achieve NASD's regulatory purposes.

Conduct Rules 2110 and 2510(b); and cause ten of the Complaint, alleging interference with an NASD investigation, in violation of Conduct Rule 2110, are dismissed.

The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

_____
Alan W. Heifetz
Hearing Officer
For the Hearing Panel

Copies to:
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