NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
Complainant,	:	Disciplinary Proceeding No. C3A020013
v.	:	Hearing Officer – DMF
JOSEPH J. VASTANO, JR. (CRD# 1623074) No. Dartmouth, MA	:	**HEARING PANEL DECISION**
	:	December 20, 2002
Respondent.	:	

Respondent is suspended from association with any member firm in any capacity for one year and fined a total of $62,000 for participating in private securities transactions, for compensation, without giving prior written notice to and obtaining prior written permission from the NASD member firm with which he was associated, in violation of Rules 3040 and 2110.

Appearances

Jacqueline Whelan, Esq., Regional Counsel, Denver, CO (Rory C. Flynn, Washington, DC, Of Counsel) for Department of Enforcement.

John P. Cione, Esq., Solana Beach, CA, for respondent.

DECISION

I. Procedural History

The Department of Enforcement filed a Complaint on March 11, 2002, against respondent Joseph J. Vastano, Jr. charging that he violated NASD Rules 3040 and 2110 by participating in private securities transactions for compensation without providing prior written notification to and obtaining prior written permission from the NASD member with which he was associated. Vastano filed an Answer denying the charge and

requested a hearing, which was held in Providence, RI, on October 17 and 18, 2002, before a Hearing Panel that included a Hearing Officer and two members of the District 11 Committee.[1]

II. Facts

Vastano was registered with NASD member L.M. Kohn & Co. ("LMK") as a Series 6 Investment Company and Variable Contracts Products Limited Representative from April 1997 until July 2000. He was previously registered with another NASD member in the same capacity from January 1987 until March 1997; he has not been registered since July 2000.[2] (CX-1, 28.)

A. The Alliance Leasing Investment Program

The charges in the Complaint relate to Vastano's involvement in the sale of investments in a program offered by Alliance Leasing Corporation. According to its promotional materials, Alliance Leasing planned to use funds provided by investors to purchase specific pieces of equipment in the investors' names, which might include office equipment such as telephone systems or copiers, kitchen equipment for fast food franchises, hospital equipment or construction equipment. Then, pursuant to management agreements between the investors and Alliance Leasing, Alliance Leasing would arrange to lease the equipment to end users. Alliance Leasing told investors they would receive a 28% total return on their investments from these leases over a period of 25 months, and that, although there was some risk of loss, the investors were protected

[1] The hearing transcript is cited "Tr. I" for the first day of the hearing and "Tr. II" for the second day; the parties' joint exhibits as "JX"; Enforcement's exhibits as "CX"; Respondent's exhibits as "RX."

[2] Even though Vastano is not currently registered, NASD has jurisdiction to bring this proceeding pursuant to Art. V, § 4 of NASD's By-Laws, because the charges relate to Vastano's conduct while registered with LMK and the Complaint was filed within two years after Vastano's registration terminated.

through ownership of the equipment and insurance that would continue lease payments if the lessee defaulted. (CX 4, 28; RX 11.)

Alliance Leasing sold the program through a multi-level marketing structure. At the apex of the pyramid was Prime Atlantic, Inc., to which Alliance Leasing paid a 30% commission. Prime Atlantic, in turn, contracted with a number of "master contractors" and the master contractors obtained sub-contractors, called "managing contractors," who recruited "independent sales contractors." Each level received a portion of the overall 30% commission. One of the master contractors was OJ, doing business under the name LifeQuest Advisors. CM, doing business through Unlimited Financial Services, Inc., served below OJ, as a managing contractor; CM enlisted Vastano, doing business through his firm Financial Fitness, Inc., as an independent sales contractor. (CX 4, pp. 40-41; Tr. I 45, 234-37)

Alliance Leasing collected more than $46 million from about 1500 investors through this program and commingled those funds in an account maintained at Merrill Lynch. From those funds, it paid some $12 million in commissions to the contractors in the various levels of its marketing structure, and additional millions to itself. It used only about $9.3 million of the remainder to purchase equipment for lease, and to a considerable degree it purchased the equipment from, and subsequently leased it to, companies that were affiliated with Alliance Leasing or owned by Alliance Leasing's principals. As a result, the investors did not receive the promised returns on their

investments.[3] Ultimately Alliance Leasing was forced into bankruptcy after the SEC commenced the action described below. (CX 21-26, 28.)

In October 1998, the SEC filed suit against Alliance Leasing and Prime Atlantic, alleging that they were engaged in securities fraud and in the distribution of unregistered securities. The SEC obtained a temporary restraining order and a preliminary injunction that, among other things, froze the defendants' assets. The court subsequently granted a summary judgment holding that the Alliance Leasing investments were securities – specifically, investment contracts – and that the defendants had violated Sections 5(a) and (c) of the Securities Act of 1933 by selling unregistered securities, that Prime Atlantic had violated Section 15(a)(1) of the Securities Exchange Act of 1934 by acting as a securities broker in the sale of the Alliance Leasing program without being registered, and that the defendants had violated Section 10(b) of the Exchange Act and Rule 10b-5 by failing to disclose to investors, among other things, that Alliance Leasing was paying a 30% commission to Prime Atlantic and its sub-contractors. The Ninth Circuit affirmed the summary judgment in an unpublished decision. SEC v. Alliance Leasing Corp., et al., No. 98-CV-1810-J (S.D. Cal. Mar. 20, 2000), aff'd, No. 00-56019 (9th Cir. Jan. 3, 2002). (CX 24-26.) It appears that some investor funds were frozen as a result of the SEC's action and that the Bankruptcy Trustee is attempting to recover additional funds for the benefit of Alliance Leasing's creditor's, including investors. (CX 21-23.)

B. Vastano's Involvement in Selling the Alliance Leasing Program

Vastano entered into an Independent Sales Agreement with CM, through CM's firm Unlimited Financial Services, in May 1998. Vastano was to receive an 11%

[3] Because Alliance Leasing did not use most of the investors' funds to purchase equipment or enter into very many leases, the supposed protections for investors (ownership of the equipment and insurance covering a lessee's default) were of little value.

commission on each $10,000 Alliance Leasing "unit" he sold. From June through September 1998, Vastano sold 14 Alliance Leasing program investments to persons who invested a total of approximately $358,000.[4] Most of the investors were LMK customers, some of whom cashed out investments held in their LMK accounts, including Individual Retirement Accounts, to obtain funds for their Alliance Leasing investments. (CX 2-7, 10, 28; Tr. I 230-35, 246-49, 256-58; Tr. II 60-61.)

Vastano received commissions for the Alliance Leasing sales he made. In addition, Vastano recruited John Edwards, another LMK registered representative, as an independent sales contractor, and received a 1% override on Edwards' sales, which exceeded $1 million. In total, Vastano received more than $52,000 through commissions on his own sales and overrides.[5] (CX 5, 10, 28; Tr. I 235, 237.)

Vastano admits he did not give LMK any notice, written or oral, of his involvement in the sale of Alliance Leasing investments. Vastano said he believed he did not have to disclose his Alliance Leasing involvement because he originally learned of the program from his LMK supervisor, Michael Yoakum. Yoakum serves as head of an Office of Supervisory Jurisdiction for LMK, in which role he became responsible for supervising Vastano's securities activities, and also operates an insurance agency, the Lighthouse Agency. Because Yoakum is in Ohio and Vastano was in Massachusetts, most of their contacts were by telephone. (Tr. I 171-76, 224; Tr. II 54-55.)

[4] Vastano sold an additional Alliance Leasing investment to his wife, but Enforcement has not charged Vastano for any violation for that sale. (Tr. I 15, 230-31.)

[5] This figure does not include commissions that Vastano earned on the sale to his wife, or the amount shown on Vastano's commission statement as a 2% override on sales by another independent sales contractor named Sherlock. Vastano said he did not know Sherlock and did not know why he was paid an override for those sales. Enforcement did not challenge this aspect of Vastano's testimony. (Tr. II 163-64.)

According to Vastano, Yoakum called him sometime in May 1998 and told him about the Alliance Leasing Program. Vastano said that Yoakum told him an Alliance Leasing investment was not a security, but rather was "like an insurance product," and advised Vastano that he "should get on the bandwagon." Vastano said that because he "felt it was an insurance product" he thought he could sell it without notifying LMK. Vastano's then-secretary testified that she remembered Vastano receiving a call from Yoakum, after which Vastano said that Yoakum had told him about the Alliance Leasing program. (Tr. I 270-73, 276, Tr. II 30, 115-16.)

Edwards, who, like Vastano, was supervised by Yoakum and is a respondent in a pending NASD disciplinary proceeding charging him with violations of Rule 3040 in connection with his sales of Alliance Leasing program investments, testified that he also learned of the Alliance Leasing program from Yoakum. According to Edwards, in May 1998 Yoakum approached him and another Lighthouse Agency employee, MT, who was not licensed to sell securities, about the Alliance Leasing program, telling them "about this product that had a fixed rate of return, that was insured, that … was an insurance product." Among other things, according to Edwards, Yoakum said that MT could sell the product, even though he was not licensed to sell securities. In addition, Yoakum said that "he was going to talk to Mr. Vastano about the product and that it was a good product that we should market." (Tr. II 64-72.)

Yoakum denied that he had any telephone conversation with Vastano about the Alliance Leasing program, but admitted that he discussed it with Edwards and MT. According to Yoakum, he received an unsolicited brochure touting the Alliance Leasing Program, merely mentioned it to Edwards and MT (but not Vastano), and sent the

brochure to Larry Kohn, president of LMK, who advised Yoakum that LMK associated persons could not be involved in selling the program. There is no evidence that Yoakum was a "master contractor," a "managing contractor," or an "independent sales contractor" for purposes of selling Alliance Leasing investments, or that he ever participated in the sale of any Alliance Leasing investments in any capacity. (Tr. I 117, 178-86, 200-02.)

Around the same time that he says he spoke to Yoakum about the Alliance Leasing program, Vastano also discussed it with CM, and on May 13, 1998, he entered into an "Independent Sales Agreement" to sell Alliance Leasing investments as a sub-contractor of CM's company. Vastano said that he did so because CM offered him a larger commission than Yoakum had proposed during their telephone conversation. Furthermore, Vastano called Edwards (who he knew from a prior association) and persuaded him to sell through CM, as well. Vastano admits he never told Yoakum or LMK that he was selling the Alliance Leasing investments through CM. Ultimately, LMK learned of Edwards' sales when an LMK customer called the firm while Edwards was on vacation; when LMK confronted Edwards, he disclosed Vastano's involvement. (Tr. I 91-93, 235, 251-53, 271-74, Tr. II 10, 32, 46, 54-55; CX 7, pp. 7-9, 13-14.)

III. Discussion

Rule 3040 prohibits any person associated with a member firm from "participat[ing] in any manner in a private securities transaction," unless, prior to participating in the transaction, the associated person provides written notice to the firm. If the associated person has received or may receive selling compensation for the transaction, the firm must approve or disapprove the person's participation, in writing, and if the firm approves, it must record the transaction on the firm's books and records

and supervise the associated person's participation "as if the transaction were executed on behalf of the member."

The SEC has explained the purpose of the rule:

> The regulatory scheme under the Exchange Act, in which the NASD is assigned a vital role, imposes on broker/dealer entities and NASD member firms the responsibility to exercise appropriate supervision over their personnel for the protection of investors. Where employees effect transactions for customers outside of the normal channels and without disclosure to the employer, the public is deprived of protection which it is entitled to expect. Moreover, the employer may also thus be exposed to risks to which it should not be exposed. Thus, such conduct is not only potentially harmful to public investors, but inconsistent with the obligation of an employee to serve his employer faithfully . . . . .

Anthony J. Amato, 45 S.E.C. 282, 285 (1973) (footnotes omitted).

A. The Alliance Leasing Investments Were Securities

Rule 3040 applies only if the Alliance Leasing investments were securities. In the SEC's litigation, the district court and the Ninth Circuit found that they were investment contracts, which are included within the definition of "security" in Section 3 of the Exchange Act. An investment contract involves (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits produced by the efforts of others. See SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946).

As explained in the trial and appellate court decisions in the SEC case, the Alliance Leasing Program satisfied all three elements. The purchasers invested substantial sums of money. There was "horizontal commonality," meaning "a pooling of interests amongst the investors," because Alliance Leasing initially commingled the investors' funds in a single, undifferentiated account; pooled several investors' funds in the few instances that it actually purchased equipment for lease; and represented that it intended to bundle groups of leases into packages for re-sale to institutions, for the

benefit of the investors. And there was also "vertical commonality," meaning that "the fortunes of the investors are linked with those of the promoters," because the plan called for the investors and Alliance Leasing to share in the expected profits from the leases. Finally, the Alliance Leasing investors relied primarily on the efforts of Alliance Leasing to purchase and lease equipment in order to generate the profits that Alliance Leasing promised. Therefore, the Alliance Leasing program investments were investment contracts, and thus securities. SEC v. Alliance Leasing Corp., CX 25 at pp. 5-7; CX 26 at p. 6.

B. Vastano Failed to Comply with Rule 3040

The other elements of Rule 3040 also apply. First, Vastano "participated" in the sale of the Alliance Leasing investments by selling the investments directly to his customers, and also by recruiting Edwards, facilitating Edwards' sales,[6] and receiving overrides on those sales. The SEC has explained that Rule 3040

> requires that an associated person give notice to the firm when participating "in any manner" in a private securities transaction outside the regular course of his association with the firm. The reach of [Rule 3040] is very broad. It covers an associated person who not only makes the sale but who participates "in any manner" in the transaction. We have previously held that a salesman who referred a customer to the issuer of a promissory note, and received a commission when the customer purchased the note, participated in a private securities transaction to an extent sufficient to subject him to the requirements of [Rule 3040].

Ronald J. Gogul, 52 S.E.C. 307, 1995 SEC LEXIS 3626 at *8 (June 8, 1995), citing Gilbert M. Hair, 51 S.E.C. 374, 1993 SEC LEXIS 883 at *11(Apr. 21, 1993).

Second, Vastano expected to receive, and did in fact receive, compensation for his participation in the sale of the Alliance Leasing investments. Finally, his activities in

[6] Edwards testified that he submitted his investors' funds and paperwork through Vastano. (Tr. II 97.)

selling the investments were outside the regular course or scope of his employment with LMK.

Therefore, Rule 3040 required that, prior to participating in any sale of an Alliance Leasing investment, he give LMK "written notice … describing in detail the proposed transaction and [his] proposed role therein …." Furthermore, because he was to receive compensation, he was required to give a separate notice for each sale of an Alliance Leasing investment, and LMK was required to advise him, in writing, whether it approved his participation in each sale. If so, LMK was required to record the transaction on its books and to supervise Vastano, "as if the transaction were executed on behalf of [LMK]." But Vastano did not provide the required notices, so LMK never approved his participation, and it did not record the transactions on its books or, more importantly, supervise his participation in the sales.

Vastano says he did not give notice because he relied on Yoakum's advice that the Alliance Leasing investments were not securities. Even if the Hearing Panel were to fully credit Vastano's testimony in that regard, it would not provide a defense, because Vastano was not entitled to rely on Yoakum's advice.[7] As the SEC said in a similar case, "A registered representative's reliance on informal discussions with colleagues, rather than an official opinion by appropriate firm personnel, is … an insufficient basis for

[7] The Hearing Panel has serious reservations about Vastano's credibility, as well as Edwards', particularly in light of Enforcement's evidence that Vastano and Edwards carefully coordinated their stories in submissions to NASD staff. Vastano's December 10, 1999 letter responding to a series of staff questions about his involvement in the sale of Alliance Leasing investments was almost word-for-word identical to Edwards' December 2, 1999 letter responding to a similar inquiry about his involvement. (Compare CX 4 (Vastano's letter) with CX 29 (Edwards' letter).) Nevertheless, at the hearing, before Enforcement showed him Edwards' letter, Vastano testified that he had written his letter in his own words, that he had not spoken to Edwards about the letter, and that he had not received a copy of Edwards' letter. (Tr. II 35-37.) This testimony was clearly false. However, the Panel also had reservations about Yoakum's credibility. Therefore, for purposes of this decision, the Panel accepts Vastano's version of the relevant events, but nevertheless finds that he violated Rule 3040 as alleged.

concluding that a transaction is not subject to [Rule 3040]." Gilbert. M. Hair, 1993 SEC LEXIS 883 at *8.[8]

Furthermore, Vastano had ample warning from LMK about his obligations. LMK's compliance manual stated:

> [T]here are many cases where the determination of whether a particular investment product is or is not a security is very difficult. … Registered Representatives are well-advised not to rely on their own judgment. Even more dangerous is placing reliance on verbal representations made by product sponsors or a written opinion letter from a law firm …. Incorrect judgements on this question may subject the Registered Representative to … suspension or expulsion from the securities industry …. Our policy is that, if there is any possibility that an investment product may be a security, the Registered Representative must submit the product to the Compliance Department for review and approval prior to soliciting any sales of such product. …
>
> In general, sale of "non-securities," unless in traditional areas, such as insurance, cannot be permitted and any such sale without [LMK's] approval and knowleged [sic] will result in severe disciplinary action to be taken by the company. There are no "good faith" exceptions to this rule.
>
> This policy is for your protection, and we urge registered representatives to allow us to assist you in making these critical and difficult judgements.

(CX 12 at 10-11.) The compliance manual also advised its representatives that LMK prohibited them from, among other things, soliciting or selling any product that had not been approved by LMK; soliciting or selling any product that might be considered a security without the written consent of the firm's compliance officer; or raising money, or participating in the raising of money for any company, individual or venture without the written consent of the firm's compliance officer. (CX 12, p. 13.)

In addition, in August 1997 LMK sent a memo to "All Reps" advising them, among other things, that "Any Rep who is engaged in **ANY** outside business activity,

[8] Only Larry Kohn, LMK's president, was authorized to approve a registered representative's participation in private securities transactions or outside business activities. (Tr. I 98.)

MUST SUBMIT AN OUTSIDE BUSINESS ACTIVITY FORM. … Please note that this matter is not to be taken lightly. Any rep who fails to submit this form and engages in outside activity, is subject to termination." (CX 8, p. 3 (emphasis in original).) In spite of this, on May 30, 1998, just 17 days after he signed his Independent Sales Agreement to sell the Alliance Leasing investment, Vastano completed and signed an LMK Request to Engage in Outside Activity form in which he failed to disclose his involvement with Alliance Leasing. In response to a question on the form asking Vastano to disclose "[a]ny business activity outside of securities business with L.M. Kohn and Company from what [sic] you receive compensation of any kind," Vastano listed only "Financial Freedom Enterprises (I do debt reduction and have the franchise in [Massachusetts]. Use only to assist clients to help get their debt under control and save more money in funds." He did not disclose that he was selling Alliance Leasing investments. (CX 8, p. 2).

Finally, Vastano testified that at the time he engaged in the Alliance Leasing sales he was aware of an earlier instance in which LMK expressly notified representatives that they were not permitted to sell a non-traditional investment after, according to Vastano, Yoakum had approved it. Specifically, Vastano said that he learned from Edwards that Edwards had held seminars in Yoakum's office regarding the sale of viatical settlement investments.[9] Vastano said that he understood that Yoakum had approved the sale of viatical investments, but that Larry Kohn, LMK's president, subsequently notified LMK representatives that they were not permitted to sell such investments. (Tr. II 10-11, 23-

[9] For a description of viatical investments, see Department of Enforcement v. Fergus, et al., No. C8A990025, 2001 NASD Discip. LEXIS 3 (NAC May 17, 2001), aff'd, Exch. Act. Rel. No. 46,746, 2002 SEC LEXIS 2780 (Oct. 30, 2002).

24, 53; RX 19.) In light of this, it should have been clear to Vastano that he could not assume, based on a call from Yoakum, that he was permitted to sell the Alliance Leasing investments without giving LMK advance written notification.[10]

Vastano's other principal argument at the hearing was that LMK was somehow at fault, because it did not adequately supervise Vastano, on the theory that if LMK had more closely supervised him, it would have discovered and halted his sale of Alliance Leasing investments. (Tr. II 134.) LMK's conduct, however, was not before the Hearing Panel. As NASD and the SEC have repeatedly emphasized, registered representatives are personally responsible for knowing and following the rules. Thus, even if LMK did not adequately supervise Vastano, that would not excuse Vastano from complying with Rule 3040.

Therefore, the Hearing Panel found that Vastano violated Rule 3040 by participating in private securities transactions, for compensation, without giving LMK the required written notice and receiving the required written approval. By violating Rule 3040, Vastano also violated Rule 2110. See, e.g., Frank Thomas Devine, Exchange Act. Rel. No. 46,746, 2002 SEC LEXIS 2780 at *21 n. 30 (Oct. 30, 2002).

B. Sanctions

For violations of Rule 3040, the Sanction Guidelines recommend that a respondent be fined $5,000 to $50,000, plus the amount of any financial benefit the respondent earned, and suspended for up to one year. In egregious cases, the Guidelines

[10] Yoakum agreed that Edwards held a seminar in Yoakum's office at which viatical settlement investments were discussed, and that Larry Kohn subsequently issued a directive forbidding LMK representatives from selling such investments, but said that he had never "approved" them for sale by the people he supervised, and he offered some supporting affidavits from his employees. (Tr. I 191-94, 202; CX 30.) Regardless whether Yoakum actually approved the sale of viatical investments, however, Vastano's belief that he had done so and then been overruled by Kohn should have led Vastano to conclude that he could not rely on Yoakum's approval of the Alliance Leasing program.

suggest a longer suspension of up to two years, or a bar. NASD Sanction Guidelines at 19 (2001 ed.) Enforcement recommended that the Hearing Panel suspend Vastano in all capacities for one year and fine him $10,000, plus the commissions he earned on the sales he made (other than to his wife) and his override on Edwards' sales.

It is critically important that registered representatives comply with Rule 3040. The rule ensures that investors who deal with NASD members and associated persons receive the protections to which they are entitled under the securities laws and regulations. In this case, because Vastano did not comply with the Rule, his and Edwards' customers did not receive those protections. There was no determination as to whether the investments were, or were required to be, registered. There was no due diligence review of the company or its operations. There were no suitability determinations – Vastano sold the investments to anyone. (Tr. I 256.) In all likelihood, if Vastano had complied with the Rule, LMK would not have permitted the sales.[11] But if the firm had allowed them, it would have known it was thereby accepting responsibility for them. Instead, because Vastano did not give notice, LMK was unknowingly exposed to the risk that Vastano's customers might seek to recover any losses they incurred from the firm.

In arriving at appropriate sanctions for Vastano's violation, the Hearing Panel looked first to the specific considerations listed in the Sanction Guidelines for violations of Rule 3040, noting that (1) Vastano did not have a proprietary or beneficial interest in Alliance Leasing and (2) there is no evidence that he attempted to create the impression that LMK sanctioned his sales of Alliance Leasing investments, which are mitigating

[11] Indeed, LMK could not properly have allowed Vastano to sell the Alliance Leasing investments because, first, they were unregistered and, second, Vastano was licensed only to sell investment company and variable products.

facts. On the other hand, Vastano (1) sold away to LMK customers and (2) did not provide even oral notice of his activities to LMK, which are aggravating facts. In particular, the Hearing Panel noted that many of Vastano's customers sold their LMK mutual fund investments, including some Individual Retirement Account investments, to obtain the funds for their Alliance Leasing investments. (Tr. II 60-61.)

The Panel also consulted the general considerations listed in the Guidelines that are applicable to all violations. NASD Sanction Guidelines at 9-10. In that regard, the Panel noted that Vastano did not have a prior disciplinary history (the absence of such a history is not mitigating, but the existence of such a history would be aggravating); Vastano has never accepted responsibility for his misconduct; there is no evidence that he attempted to make restitution or otherwise remedy his misconduct prior to detection;[12] his claimed reliance on the advice of Yoakum that the investments were not securities was not reasonable; his actions led to serious customer injury; and he sold 14 Alliance Leasing investments over a period of several months and induced Edwards to sell Alliance Leasing investments, as well. All of this suggests the need for substantial sanctions to accomplish NASD's remedial goals.

Finally, the Panel considered Vastano's arguments that he thought the Alliance Leasing investment was an "insurance product," and that LMK's supervision was inadequate. The fact that Alliance Leasing represented that there was insurance coverage that would continue lease payments in the event of a default by a lessee gave Vastano no reasonable basis for concluding that the investment itself was an insurance product. Further, even if it had been some sort of non-traditional insurance product, Vastano

[12] He stipulated that he has never returned any portion of his commissions for the Alliance Leasing sales to Alliance Leasing's Bankruptcy Trustee. (CX 28.)

would still have been required to notify LMK, pursuant to Rule 3030, that he intended to sell it through CM. It is quite clear that he did not provide such notification because he did not want LMK and Yoakum to know what he was doing. And although LMK's overall supervision may have been less than ideal, through its manual and other communications LMK told Vastano that he was required to give the firm advance notice of activities such as the sale of the Alliance Leasing investments. Vastano has no one but himself to blame for failing to follow the rules.

Taking all these circumstances into consideration, the Hearing Panel concluded that the sanctions recommended by Enforcement are appropriate in this case. Therefore, Vastano will be suspended in all capacities for one year and fined a total of $62,000, representing a $10,000 base fine plus approximately the amount of commissions he earned from his own and Edwards' sales. The fine will be due and payable when Vastano seeks to return to the securities industry.

V. Conclusion

For violating NASD Rules 3040 and 2110 by participating in private securities transactions for compensation without giving the required written notice to and obtaining written permission from the NASD member with which he was associated, respondent Joseph J. Vastano, Jr. is suspended from association with any member in any capacity for one year and fined $62,000. In addition, Vastano shall pay costs in the amount of $3,744.30, including an administrative fee of $750 and hearing transcript costs of $2,994.30. The monetary sanctions shall be due and payable when Vastano seeks to re-enter the securities industry.

If this decision becomes NASD's final disciplinary action, Vastano's suspension shall become effective with the opening of business on March 3, 2003 and end at the close of business on March 2, 2004.[13]

HEARING PANEL

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By: David M. FitzGerald
Hearing Officer

Copies to:

Joseph J. Vastano, Jr. (via overnight delivery and first class mail)
Jacqueline D. Whelan, Esq. (electronically and via first class mail)
Rory C. Flynn, Esq. (electronically and via first class mail)
John P. Cione, Esq. (via facsimile and first class mail)

[13] The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.