

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

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| DEPARTMENT OF ENFORCEMENT, | : |                               |
|                            | : |                               |
| Complainant,               | : | Disciplinary Proceeding       |
|                            | : | No. C05990035                 |
| v.                         | : |                               |
|                            | : | <b>Hearing Panel Decision</b> |
| JOHN LAWSON GREER, III     | : |                               |
| (CRD #860076)              | : |                               |
|                            | : |                               |
| Knoxville, TN              | : | Hearing Officer - GAC         |
|                            | : |                               |
|                            | : |                               |
| Respondent.                | : | November 6, 2000              |

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*Digest*

The Department of Enforcement (“Enforcement”) filed a three cause Complaint alleging that Respondent John Lawson Greer, III (“Respondent” or “Greer”) violated NASD Conduct Rule 2110 by completing a false client agreement form, a false new account approval form, and a false client option agreement and approval form while associated with a member firm.

Although the Respondent first denied the allegations in his Answer, Greer subsequently admitted the violations in a pre-hearing conference and requested that a Hearing be held to determine the appropriate sanctions.<sup>1</sup> Based on the Hearing record, including Respondent Greer’s admission of liability, the Hearing Panel found that the Respondent violated Rule 2110 as alleged in the Complaint. The Hearing Panel suspended Respondent Greer in all capacities for two weeks, fined him \$5,000, and ordered that he sit for the supervisory section of the

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<sup>1</sup> February 22, 2000 Pre-Hearing Conference Tr., pp. 7-9.

Continuing Education Program, Regulatory Element. The Hearing Panel also ordered that Respondent hereafter be required to be employed at a member firm that will agree to have all new account forms for Greer's customers reviewed by the firm's Compliance Department.

### *Appearances*

George C. McGuigan, Jr., Esq. and Andrew A. Favret, Esq. (Rory C. Flynn, Washington, DC, Of Counsel), on behalf of the Department of Enforcement.

John Lawson Greer, III appeared *pro se*.

## **DECISION**

### **I. PROCEDURAL BACKGROUND**

#### A. Complaint

Enforcement filed a three cause Complaint on November 22, 1999, charging the Respondent with violating NASD Conduct Rule 2110. The Complaint alleged that from November 1996 through October 1998, the Respondent was associated with member firm Morgan Keegan & Company, Inc. ("Morgan Keegan"). According to the Complaint, on or about September 18, 1998, Respondent Greer completed a Morgan Keegan Client Agreement in the name of "J. Lawson Green" which was false and misleading. Thereafter, on or about September 24, 1998, the Respondent completed a New Account Approval form in the name of "J. Lawson Green" which was false and misleading. Finally, the Complaint alleges that on or about September 27, 1998, Respondent Greer completed a Client Option Agreement and Approval form in the name of "J. Lawson Green" which was false and misleading.

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B. Answer

The Respondent filed an Answer on January 31, 2000, in which he requested a Hearing and stated as for each cause of the Complaint, “that other factors were involved which would make the respondent not guilty.”<sup>2</sup>

C. Respondent’s Admission of Liability

In a pre-hearing conference held on February 22, 2000, the Respondent orally amended his position with respect to liability by admitting that he committed the violations alleged in the Complaint, and asked that a Hearing be held to address the issue of sanctions.<sup>3</sup>

D. The Hearing

The Hearing was held in Nashville, Tennessee, on June 14, 2000, before a Hearing Panel composed of the Hearing Officer, and two current members of the District 5 Committee. Enforcement presented 17 exhibits (CX 1-17). In addition to testifying on his own behalf, the Respondent offered four exhibits (RX 1-4) and called one witness, Dorothy L. Wilt, a registered nurse and marriage and family therapist.

The Hearing Officer admitted into evidence all of the exhibits offered by the Parties. The Parties also offered a Stipulation and Agreement of the Parties, in which they stipulated to the authenticity and admissibility of Enforcement’s first 16 exhibits.

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<sup>2</sup> Answer, ¶¶ 1-3.

<sup>3</sup> February 22, 2000 Pre-Hearing Conference Tr., pp. 7-9.

## II. DISCUSSION

### A. Background of Respondent

John Lawson Greer, III, age 49, has been employed in the securities industry since 1978. The Respondent was registered as a General Securities Representative and associated with member firm Morgan Keegan & Company, Inc. from November 1996 until October 1998. Since October 1998, the Respondent has been associated with another member firm where he is registered as a General Securities Representative and Principal, and as a Registered Options Principal.<sup>4</sup> This is the Respondent's first formal disciplinary action in the 22 years that he has been in the securities industry.

### B. Completion of the False and Misleading Account Documents

On September 18, 2000, the Respondent completed a Morgan Keegan Client Agreement ("Client Agreement") on behalf of a fictitious customer he named "J. Lawson Green."<sup>5</sup> In completing the Client Agreement, the Respondent falsely signed the name "J. Lawson Green."

On September 24, 1998, the Respondent completed a New Account Approval form ("New Account form") for the fictitious customer.<sup>6</sup> In completing the form, Greer used a composite of information about different people to comprise the background information about his fictitious "J. Lawson Green." According to the Respondent, he initially used his brother-in-

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<sup>4</sup> CX 3.

<sup>5</sup> CX 4; CX 16, p. 3.

<sup>6</sup> CX 5.

law's address as the address listed for the account, before switching it to a post office box.<sup>7</sup>

The document also listed the date of birth as November 10, 1957, which coincides with the day, but not year of his son's date of birth.<sup>8</sup> Greer also used his son's social security number for the account.<sup>9</sup>

The Respondent used his own investment experience to represent the experience of the fictitious customer. Also, significantly, the Respondent noted on the New Account Form that the customer was not related to any employee of Morgan Keegan, or any other member firm, and that the broker had no beneficial interest in the account.<sup>10</sup>

Finally, on September 27, 1998, the Respondent completed and signed a Client Option Agreement and Approval form ("Client Option Agreement"). In this document, the Respondent listed the fictitious customer as self-employed in real estate, and again listed the year of birth as 1957. The Respondent falsely signed the customer's signature as well as his own as the account executive, before having the document approved by a branch manager.<sup>11</sup>

C. Respondent's Attempt to Trade in the Account

On October 8, 1998, the Respondent attempted to effect a purchase in the J. Lawson Green account.<sup>12</sup> To pay for the transaction, the Respondent obtained a cashier's check made

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<sup>7</sup> CX 16, p. 3, # 1.D.

<sup>8</sup> His son was born in 1982. CX 16, p. 3, # 1.C.

<sup>9</sup> Hearing Tr., p. 44.

<sup>10</sup> CX 5.

<sup>11</sup> CX 6.

<sup>12</sup> CX 7.

payable to Morgan Keegan.<sup>13</sup> On the portion of the check that indicated who purchased the check, it noted “John Greer.” However, before submitting the check to Morgan Keegan, the Respondent attempted to type an “n” over the final “r” in “Greer” to make it look like “Green.” Morgan Keegan eventually determined that Greer was the source of the funds and that the account was improperly established by the Respondent. The transaction was subsequently canceled and Greer was terminated from the firm.

D. Respondent’s Initial Explanation of the Account

On October 29, 1998, Morgan Keegan filed a full Form U-5 with the NASD for Respondent Greer.<sup>14</sup> Thereafter, on November 3, 1998, NASD Regulation, Inc. (“NASDR”) Special Investigator, Denise M. Labat, sent the Respondent a letter requesting certain information in response to the Form U-5, which stated that he had opened a fictitious account for personal use at Morgan Keegan.<sup>15</sup> In response to the inquiry, on November 19, 1998, Greer wrote:

I opened an account for my son. The name on the account was J Lawson Green. The name should have been Greer, but it came out Green. We use the name J Lawson to distinguish between the various Johns in my family.... In opening the account for my son, I neglected to code the account as a custodial account or as employee related.

In a letter to the NASDR staff dated January 10, 1999, the Respondent continued to assert that the account was for his son, but acknowledged the inaccuracies of the account opening forms, noting that “[my] son was not self employed as a salesman. His income was less

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<sup>13</sup> CX 11.

<sup>14</sup> CX 1, p. 2.

<sup>15</sup> CX 13.

than \$75,000 and his net worth is less than \$500,000. The investment experience was reflective of my experience. The financial investment was with my own funds and put in my son's account to eliminate further harassment from management.”<sup>16</sup>

E. Respondent's Explanation for Setting Up the Fictitious Account

After initially informing Tennessee officials and the NASDR staff that the account was established for his son, and that the forms simply contained inaccuracies, the Respondent admitted that the account was not set up for his son, but for himself.<sup>17</sup> The Hearing Panel finds that the Respondent established the account as a means to trade securities without facing the heightened scrutiny he was under from Morgan Keegan.

The Respondent called Dorothy L. Wilt (“Wilt”) as a witness to provide some explanation for what may have caused the Respondent to act in this violative manner. Ms. Wilt is a registered nurse and a marriage and family therapist.<sup>18</sup> She began providing counseling on a weekly basis to the Respondent and his wife in September 1999.<sup>19</sup> Ms. Wilt testified that the Respondent had been suffering from “a reactive depression” brought on by a succession of personal and professional losses. It was that depression, according to Ms. Wilt, and not a character disorder that led to the violative behavior.<sup>20</sup> Ms. Wilt stated that the Respondent's

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<sup>16</sup> CX 16, p. 3, 1.E.

<sup>17</sup> Hearing Tr., p. 44; CX 16, p. 4.

<sup>18</sup> RX -1; Hearing Tr. p. 30.

<sup>19</sup> Hearing Tr. pp. 22, 30-31.

<sup>20</sup> Hearing Tr. p. 23.

actions were “not impulsive in that it took steps to organize, to write out.”<sup>21</sup> Nonetheless, she opined that the Respondent has responded well to therapy and an antidepressant drug, and has already made “tremendous progress” toward improving his mental condition.

Ms. Wilt suggested that the Respondent should be sanctioned for the violations with a fine, but cautioned against a six month suspension, since that would ruin his business and cause the Respondent to incur another “loss.”<sup>22</sup>

### **III. LEGAL DISCUSSION**

NASD Conduct Rule 2110 states that a member or associated person “in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” In District Business Conduct Committee for District 9 v. Jerry L. Sickels, Complaint No. C9A950036 (January 22, 1997) 1997 WL 1121331 at \*2-3 (1997), the National Business Conduct Committee explained that the SEC “previously has held that an associated person acts in contravention of just and equitable principles of trade by falsifying records submitted to the NASD or the member firm.” In In re Charles E. Kautz, Exchange Act Re. No. 37072 (April 5, 1996), the [SEC] stated:

[It] is a violation of NASD Rules to enter false information on official Firm records. The entry of accurate information on official Firm records is a predicate to the NASD’s regulatory oversight of its members. It is critical that associated persons, as well as firms, comply with this basic requirement.

Similarly, in In re Donald Clyde Bozzi, Complaint No C10970003, 1999 NASD Discip. LEXIS 5 (NAC Jan. 13, 1999), the National Adjudicatory Counsel found that the

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<sup>21</sup> Hearing Tr. p. 25.

<sup>22</sup> Hearing Tr. p. 29.



respondent violated Rule 2110 by submitting three life insurance applications that included false information about the customers, including misstatements of the customers' dates of birth.

The Respondent has subsequently acknowledged and the Hearing Panel so finds that the account was not established for the Respondent's son, but rather as a vehicle for the Respondent to effect personal transactions in a dishonest manner in order to avoid detection from Morgan Keegan. Based on the record, the Hearing Panel finds that the Respondent violated NASD Conduct Rule 2110 by failing to observe high standards of commercial honor and just and equitable principles of trade in completing these account forms, as alleged in the three causes of Complaint.

#### **IV. SANCTIONS**

There are two possible NASD Sanction Guidelines ("Guidelines") that may be looked to for guidance in imposing sanctions for completing and filing customer account documents. The first is the Guideline for recordkeeping violations, which explicitly includes violations of Conduct Rule 2110. The second is the Guideline for forgery and/or falsification of records."<sup>23</sup> In terms of monetary sanctions, there is little distinction between the recommended ranges in the two Guidelines. The Guideline for recordkeeping violations recommends imposing a fine ranging between \$1,000 and \$10,000 and, in egregious cases, imposing a fine ranging between \$10,000 and \$100,000.

The Guideline for forgery and/or falsification of records, recommends the imposition of a fine ranging between \$5,000 and \$100,000. As to non-monetary sanctions, the Guideline for

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<sup>23</sup> See NASD Sanction Guidelines, 28, 35 (1998 ed.).

recordkeeping violations appears somewhat more lenient than the Guideline for forgery and/or falsification of records.<sup>24</sup>

Enforcement has requested that Respondent Greer be fined \$5,000 and suspended in all capacities for six months.<sup>25</sup> In support of its request, Enforcement asserts that there were several aggravating factors. The first aggravating factor, according to Enforcement, was that the documents included account opening records. Enforcement stressed that a member firm's Compliance Department as well as securities regulators rely heavily on the accuracy of these documents in the performance of their responsibilities.<sup>26</sup>

The second aggravating factor, according to Enforcement, was the nature of the misrepresentations. The Respondent created an entirely fictitious person and entered many pieces of incorrect information.<sup>27</sup> The Respondent's motive is the third aggravating factor. According to Enforcement, the Respondent's account at Morgan Keegan was restricted because of a problem that he had paying for a trade.<sup>28</sup> Enforcement asserts that he opened the fictitious account in order to avoid any further surveillance and to avoid the restriction.<sup>29</sup>

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<sup>24</sup> The Guideline for "Recordkeeping Violations" recommends that adjudicators consider the imposition of a suspension in any and all capacities for up to 30 business days and that, in egregious cases, a lengthier suspension of up to two years or a bar may be appropriate. Id. at 28. By contrast, the Guideline for "Forgery and/or Falsification of Records" suggests that, where mitigating factors exist, adjudicators should consider the imposition of a suspension in any and all capacities for up to two years and, in egregious cases, should consider a bar. Id. at 35.

<sup>25</sup> Hearing Tr., p. 10.

<sup>26</sup> Hearing Tr., pp. 10-11.

<sup>27</sup> Hearing Tr., pp. 11-14.

<sup>28</sup> During the Hearing, there were several references to the fact that the Respondent was under a "90 day restriction" regarding his own trading. The full extent of the restriction was never clearly established at the Hearing, however.

<sup>29</sup> Hearing Tr., pp. 14-15.

Finally, Enforcement stresses that the Respondent's conduct was not impulsive, but was rather the product of several separate decisions. Specifically, Enforcement noted that the three documents were completed on three different dates, that the transaction was effected on a fourth date, and the cashier's check was obtained, altered and submitted on yet another date. This, according to Enforcement, shows that the acts carried "all the characteristics of a deliberate, planned, methodical action, indicating a high degree of consent."<sup>30</sup>

In considering mitigating factors, the Hearing Panel observed that the Respondent now appears quite remorseful regarding his behavior. Further, he has been dealing aggressively with the underlying personality flaw that he believes led to these acts. This includes medication, and the treatment he is now receiving from a marriage and family therapist. Also, as acknowledged by Enforcement, the case did not involve a customer and there was no customer loss.<sup>31</sup>

The Respondent already settled this matter with the State of Tennessee. In that settlement, the Respondent agreed to pay a fine of \$10,000, re-qualify as a General Securities Representative (Series 7) and under the Uniform Securities Agent State Law Exam (Series 63).<sup>32</sup> He also agreed to have closer supervision by his employing firm and agreed to promptly forward any customer complaints to the state securities office. As a consequence of the state action, Greer was not registered in his home state, and was thus unable to work for a period of approximately six months.

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<sup>30</sup> Hearing Tr., p. 18.

<sup>31</sup> Hearing Tr., p. 18.

<sup>32</sup> The Respondent provided proof at the Hearing that he already sat for and passed the Series 7 and Series 63 exams, as required by the settlement with Tennessee.

The Hearing Panel believes that the \$5,000 fine requested by Enforcement is appropriate under the facts and circumstances of this case. The Hearing Panel finds, however, that a lengthy suspension is not needed, given the mitigating circumstances, the sanctions already imposed by Tennessee, and the fact that the violative acts already required him to re-register in the state, which took nearly six months. Instead, the Hearing Panel found that a shorter suspension, along with certain other required undertakings fashioned more closely to the violative conduct, is more appropriate.

Based on a review of its findings, the principal considerations, as well as the aggravating and mitigating factors, the Hearing Panel therefore fines the Respondent \$5,000, suspends the Respondent in all capacities for two weeks, and orders that he sit for the supervisory section of the Continuing Education Program, Regulatory Element within 180 days from the date this Decision becomes final. The Hearing Panel also ordered that Respondent hereafter be required be employed at a member firm that will agree to have all new account forms for Greer and his customers promptly reviewed by the firm's Compliance Department.

#### **IV. CONCLUSION**

The Hearing Panel found that Respondent Greer violated NASD Conduct Rule 2110 as alleged in each of the three causes of the Complaint. The Hearing Panel suspended the Respondent in all capacities for two weeks, fined the Respondent \$5,000, and ordered that he sit for the for the supervisory section of the Continuing Education Program, Regulatory Element within 180 days from the date this Decision becomes final. The Hearing Panel also ordered that Respondent hereafter be required to be employed at a member firm that will agree to have all new accounts forms for Greer and his customers reviewed by the firm's Compliance

Department.. The Hearing Panel also assessed costs against the Respondents in the amount of \$1,416.95, consisting of a \$750.00 administrative fee and \$666.95 for the cost of the Hearing transcript.<sup>33</sup> These sanctions shall become effective on a date set by the Association , but not earlier than 30 days after this decision becomes the final disciplinary action of the Association, except that if this decision becomes the final disciplinary action of the Association, the suspension shall become effective with the opening of business on Monday, January 1, 2001 , and end on Sunday, January 14, 2001.

Hearing Panel

by: \_\_\_\_\_  
Gary A. Carleton  
Hearing Officer

Copies to:

Via Airborne Express and First Class Mail  
John L. Greer, III

Via First Class Mail and Electronic Transmission  
George C. McGuigan, Jr., Esq.  
Andrew A. Favret, Esq.  
Rory C. Flynn, Esq.

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<sup>33</sup> The Hearing Panel 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.