BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of District Business Conduct Committee For District No. 7, Complainant, vs. William A. Lobb Atlanta, Georgia, Respondent.	DECISION Complaint No. C07960105 District No. 7 (ATL) Dated: April 6, 2000

Branch manager's supervision of registered representative was "reasonable" under the circumstances. Held, DBCC findings of inadequate supervision reversed, sanctions set aside, and case dismissed.

Respondent William A. Lobb ("Lobb") appealed the January 28, 1998 decision and the April 5, 1999 supplemental decision ("Supplemental Decision") of the District Business Conduct Committee for District No. 7 ("DBCC") pursuant to Procedural Rule 9310. After a review of the entire record in this matter, we reverse the DBCC's finding that Lobb failed reasonably to supervise representative Wayne Vaughan ("Vaughan") in violation of Conduct Rules 2110 and 3010. We therefore set aside the censure and $10,000 fine, and we dismiss the complaint.

Background

Lobb first entered the securities industry in 1977. He joined Oppenheimer & Co. ("Oppenheimer") in 1986.[1] He is currently a branch manager of the Atlanta office of Oppenheimer, and he is registered as a general securities principal, general securities representative, and options principal. Lobb has no prior disciplinary history.

[1] Oppenheimer & Co. is now CIBC Oppenheimer Corp.

In May 1992, Vaughan joined Oppenheimer's Atlanta office as a general securities representative.[2] He brought with him VB's account, which he had managed for several years. At that time, VB was 69 years old and had approximately $95,000 in her account. Both the Oppenheimer new account form, which was completed in April 1992, and an amended new account form, which was completed in November 1992, indicated that VB had a net worth of $300,000. VB did not sign either of these forms, however.

The new account form listed VB's sole trading objective as "long term growth." The amended new account form indicated five investment objectives, which were not prioritized: fixed income, income moderate growth, long-term growth, short-term trading and business-risk appreciation. After VB opened her account, Lobb sent VB a letter which indicated that the firm believed her net worth to be $300,000 and that her trading objectives included short-term trading, among others. The letter requested her to contact the firm if its assumptions were incorrect. VB did not respond to the letter.

While at Oppenheimer, Vaughan put VB on margin and increased the trading in her account. The account lost money. Between May 1992 and August 1993, Vaughan made 60 purchases and 60 sales, primarily of over-the-counter ("OTC") stocks. During this period, the annualized turnover ratio in VB's account was 7.1.[3] The account sustained trading losses of $51,115 and carried a large margin debit. Of the positions established, none were held more than eight months, 96 percent were held six months or less, 69 percent were held three months or less, and 30 percent were held less than one month. VB paid $35,686 in commissions, $14,142 of which went to Vaughan, and $3,365 in margin interest. VB made three withdrawals totaling $21,000.

Supervisory Procedures at Oppenheimer

In accordance with Oppenheimer's written supervisory procedures as of 1993, Lobb delegated some supervisory responsibilities to Paul Vogel ("Vogel"), who was the operations and compliance manager for Oppenheimer's Atlanta office.[4] Lobb and Vogel had joint

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[2] Vaughan did not have any disciplinary history at the time he joined Oppenheimer.

[3] The courts and the SEC have held that a turnover rate greater than six constitutes excessive trading. See, e.g., In re Peter C. Bucchieri, 52 S.E.C. 800, 805 (1996) ("'While there is no clear line of demarcation, courts and commentators have suggested that an annual turnover rate of six reflects excessive trading.'") (quoting Mihara v. Dean Witter & Co., 619 F.2d 814, 821 (9th Cir. 1980)); In re Shearson Lehman Hutton Inc., 49 S.E.C. 1119, 1122 (1989) (same).

[4] Oppenheimer's written supervisory procedures allowed Lobb to delegate the following responsibilities to Vogel: review of account documents to ensure accuracy and completeness;

responsibility for communicating with clients, either verbally or in writing, if deemed appropriate by Lobb. They also shared responsibility for taking appropriate action in response to evidence of unsuitable trading, such as ceasing some or all of the account activity, closing down a margin account, or restricting an account to certain types of investments. Oppenheimer's written supervisory procedures did not require supervisors to contact customers.

Lobb testified that either he or Vogel reviewed the daily order tickets on a daily basis and looked for excessive mark-ups, price changes, and any other red flags. They also reviewed the trade blotters, which would indicate customers' full names, account numbers, and any trades that had been processed. The daily reviews would not reveal patterns of unsuitable trading, however. There were three ways in which supervisors could be alerted to unsuitable trading in an account: First, there was a computer-generated list called a "Compliance Review Run," which listed the commissions for each account. Second, supervisors also performed annual "book reviews," during which they reviewed each customer's holdings and new account information for signs of unsuitability.[5] Finally, the compliance department in the New York office of Oppenheimer generated a "Compliance Review Report," which highlighted certain accounts for further investigation.

Supervision of Vaughan at Oppenheimer

Lobb made Vogel responsible for supervising Vaughan's accounts. On December 22, 1992, the Atlanta office of Oppenheimer received a Compliance Review Report that cited VB's account for excessive trading activity and commissions in November 1992. Vogel was concerned, and he reviewed VB's account with Vaughan. Vogel continued to monitor the account. On February 1, 1993, Lobb forwarded to Vogel another Compliance Review Report that cited VB's account for excessive trading.

Lobb and Vogel met with Vaughan on February 19, 1993. This was the first time that Lobb reviewed VB's account. Following the meeting, Lobb and Vogel told Vaughan: (1) to get VB off of margin; and (2) to purchase blue chip stocks rather than speculative OTC stocks. Lobb instructed Vogel to monitor VB's account on a daily basis after the meeting. On February 22, 1993, the following business day, Lobb called Allen Holeman ("Holeman"), the Compliance Director for Oppenheimer in New York, and discussed with him the action taken to control the trading in VB's account. According to Lobb's personal notes taken during the phone call,

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review of account statements for type and level of trading; determination of suitability of such trading given client's objectives, sophistication and resources; questioning of broker or client on recent transactions; and creation of account file to retain brief memos on each account selected.

[5] Oppenheimer required managers to conduct book reviews once a year. Lobb chose to perform this review twice a year.

Holeman told Lobb "to continue to curtail the trading," to "[w]atch Vaughan," and to "[k]eep him informed" of any changes.

Lobb had discretionary authority under Oppenheimer's written supervisory procedures to employ whatever means were appropriate to remedy the problem, including restricting the account to certain types of investments, requiring that the margin account be closed, or contacting the customer. At the DBCC hearing, Lobb explained his decision not to contact the customer:

> [W]e could have done any number of things. We could have asked her to come in. We could have called her. We could have written her. We could have done nothing. But we felt that something had to stop here, something had to change. So it was clear that [Vaughan] was the point of control with this account. . . . We felt that if we were going to affect [sic] a change, manage the outcome, the most effective way to do it was with pressure at the control point. . . . So we called him in and instructed him on that day, look, this is going to stop. We went through the reasons . . . He responded this is what [the customer] wants to do. . . . She's done this for years. . . . [T]he fact that she had been doing it was not going to allow us or we didn't feel it would justify her to continue to do that.

Vaughan initially changed his trading strategy following his meeting with Lobb. During March 1993, Vaughan made three sales from VB's margin account and issued a $7,000 check to VB at her request.[6] He did not purchase any stocks. During April 1993, Vaughan continued to make a number of sales from VB's margin account.[7] Vaughan also purchased 500 shares of Calgene, Inc. ("Calgene") for VB's cash account on April 29. Lobb testified that Vogel did not alert him to Vaughan's purchase of Calgene.[8] In May 1993, Vaughan made a cash purchase of 100 shares of Home Depot, Inc. and continued to sell stock from VB's margin

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6 According to VB's account statement for the period ending February 26, 1993, VB had account equity of $46,794; margin debit of $77,419; month-to-date and year-to-date gross commissions of $5,591 and $9,381, respectively; and the number of month-to-date and year-to-date transactions was 23 and 35, respectively.

7 Vaughan testified that he spoke with VB after Vogel told him to take her off of margin, but that VB did not want to liquidate and incur losses. Vaughan was therefore instructed to sell securities from the margin account when the opportunities arose.

8 As discussed further below, the DBCC imposed sanctions on Vogel for failure to supervise properly.

account. Vaughan also purchased 1,000 shares of Royal Oak Mines Inc. ("Royal Oak"), a speculative stock that was not in line with Lobb's February instructions. Lobb immediately spoke with Vaughan, and ordered him to place a stop-loss sale order for the shares of Royal Oak. The stock was sold within 10 days.

On May 13, 1993, in response to Vaughan's purchase of Royal Oak, Lobb ordered Vaughan to have all of his orders for VB's account approved by either Lobb or Vogel prior to entry. On May 19, 1993, Lobb sent Vaughan a memorandum warning Vaughan that he would be held accountable if he did not continue to adhere to the trading restrictions that Lobb and Vogel had articulated during their February meeting. Lobb also suggested some suitable investment strategies. Lobb sent a copy of this memorandum to Holeman in New York. Lobb also called Holeman on May 24, 1993 to discuss the memorandum. According to Lobb's contemporaneous notes, Holeman told Lobb that he approved of the steps that Lobb had taken, and that Lobb and Vogel "should work with Wayne Vaughan and as needed raise the level of intervention until he gets the message." During June 1993, Vaughan complied with Lobb's instructions. After obtaining the necessary approval, he continued to sell stock from VB's margin account, and he purchased 100 shares of Eastman Kodak Co. and 100 shares of Monsanto Co. on cash.

Vaughan resigned from Oppenheimer in July 1993. In his resignation letter, he explained that the restrictions Lobb and Vogel had placed on his trading in VB's account prevented him from working comfortably at Oppenheimer. According to his resignation letter, he felt "that [he was] being forced to resign," and that it had been explained to him that "[he had] a loaded gun to [his] head."[9] At the time of Vaughan's resignation, VB's margin balance had been reduced to $39,156 and the net value of her account was $48,533.[10]

Procedural History

This case arose out of a related arbitration proceeding that VB brought against Raymond James & Associates ("Raymond James"), Oppenheimer, and Vaughan to recover losses she sustained as a result of the excessive trading in her account.[11] Raymond James and Oppenheimer settled the arbitration in December 1996 for $72,000. NASD Regulation District

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9 Immediately before resigning, Vaughan sold additional stock from VB's margin account and purchased, without authorization from either Lobb or Vogel, 200 shares of Cott Corporation, a stock recommended by Oppenheimer.

10 The $48,533 figure includes a $7,000 cash withdrawal that VB made from her account on March 18, 1993.

11 After resigning from Oppenheimer, Vaughan joined Raymond James. VB moved her account to Raymond James, thereby maintaining her relationship with Vaughan.

No. 7 initially brought this action against Vaughan and three supervisors – Lobb, Vogel, and Frank Hudson ("Hudson"), who supervised Vaughan at Raymond James.

In the proceedings below, Hudson, Vogel and Lobb were charged with violations of Conduct Rules 2110 and 3010 for failure to supervise properly the trading in VB's account. NASD Regulation accepted Hudson's offer of settlement. The DBCC made findings regarding Vogel and Vaughan, as well as Lobb. Vogel, who did not file an answer in response to the complaint, was censured, fined $10,000 and suspended for 30 business days from association with any NASD member in any principal or supervisory capacity and suspended thereafter until he requalified. Vaughan, who was charged with engaging in unsuitable trading in violation of Conduct Rules 2110 and 2310, was censured and suspended for 20 business days from association with any NASD member in any capacity and, until he requalified by examination, in any capacity in which he sought to participate in the securities industry.

The DBCC found that Lobb violated Conduct Rules 2110 and 3010. Lobb was censured and fined $10,000. The DBCC's finding that Lobb failed reasonably to supervise VB's account was based on the following: (1) Lobb's failure "immediately [to] arrange[] to interview the customer to ascertain precisely what she understood about what was occurring in her account . . . and whether she understood the risks of the trading strategy employed;" and (2) Lobb's failure "immediately [to] notif[y] Oppenheimer's New York compliance office that, in his opinion, the trading in VB's account was unsuitable."[12]

Both Lobb and Vaughan appealed the January 28, 1998 decision of the DBCC.[13] We handled the appeals separately, and in a decision dated October 22, 1998, we affirmed the DBCC's finding that Vaughan engaged in unsuitable trading in violation of Conduct Rules 2110 and 2310. We affirmed the DBCC's imposition of a censure and increased the suspension from 20 to 30 business days in all capacities. We ordered Vaughan to requalify by examination, following his suspension, in any capacity in which he sought to participate in the securities industry.

On March 20, 1998, after Lobb filed his notice of appeal, he moved to introduce new evidence pursuant to Procedural Rule 9346.[14] On April 15, 1998, the parties filed a proposed

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[12] Evidence of Lobb's phone conversations with Holeman had not been presented to the DBCC.

[13] We also called the Vaughan matter for review pursuant to Procedural Rule 9312 to determine whether the sanctions imposed by the DBCC were appropriate in light of the violations.

[14] Lobb moved to introduce the following evidence: (1) notes that Lobb took during phone conversations with Holeman; (2) monthly compliance memoranda; (3) internal audit review reports; (4) testimony of Kenneth Newman ("Newman"), an independent consultant on

joint order in which they asked the National Adjudicatory Council ("NAC") to vacate the DBCC decision as to Lobb and to remand the decision to the DBCC for reconsideration in light of the additional evidence. On May 19, 1998, a Review Subcommittee ("RSC") of the NAC considered the proposed joint order. Although the NAC did not enter the proposed joint order, it remanded the case to allow the DBCC to decide whether to consider the new evidence and, if so, how the new evidence would affect its decision.

On July 17, 1998, Lobb filed a pre-hearing memorandum with the DBCC describing the evidence that he intended to present. Lobb's memorandum included a description of the evidence he had moved to introduce at the March 1998 NAC hearing. He also proposed to introduce the testimony of Robert Kleinberg ("Kleinberg"), Oppenheimer's General Counsel during the relevant period. The DBCC ruled that, with the exception of the testimony of Kenneth Newman, Lobb could present all of the evidence he proposed to introduce. On April 5, 1999, after a hearing and consideration of the newly admitted evidence, the DBCC issued its Supplemental Decision, which reaffirmed both its finding that Lobb violated Conduct Rules 2110 and 3010 and the imposition of a censure and a $10,000 fine. On May 21, 1999, Lobb filed a timely notice of appeal of the DBCC's original decision and its Supplemental Decision.

Discussion

The ultimate issue on appeal is whether Lobb's conduct was "reasonable" under the facts of this case. Lobb argued that he had reasonably carried out his supervisory responsibilities under the circumstances. In support of his argument, he stated that he had followed and enforced Oppenheimer's supervisory procedures and policies. He asserted that the corrective actions that he took immediately and over the course of the following months were reasonable and were executed with a view toward preventing violations. He asserted that his conduct therefore did not violate Conduct Rules 2110 and 3010.[15]

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broker-dealer compliance issues; and (5) an analysis of the projected performance of VB's account.

[15] Lobb also argued that neither the rules nor the case law requires a supervisor to contact a customer when he or she has already detected "red flags" and taken corrective measures to prevent violations. Lobb further asserted that, in any event, he is protected by the Securities and Exchange Commission's (the "Commission") "safe harbor" provision, which provides that no person shall be deemed to have failed to supervise reasonably where (1) there have been established procedures which would reasonably be expected to prevent and detect, insofar as is practicable, any such violation, and (2) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures without reasonable cause to believe that such procedures were not being complied with. 15 U.S.C. § 78o(b)(4)(E)(i)-(ii). Because we find that Lobb's conduct did not violate Conduct Rules 2110 and 3010, we do not reach the issue of whether Lobb's conduct was protected by the Commission's "safe harbor" provision.

After reviewing the entire record and considering the arguments made on appeal, we find that Lobb's conduct under the particular facts of this case was "reasonable" and did not constitute a violation of Conduct Rules 2110 and 3010. We therefore reverse the DBCC's findings, set aside the sanctions and dismiss the case.

Lobb's Conduct Was Reasonable

Conduct Rule 3010 requires that members establish, maintain, and enforce a set of written supervisory procedures and that these procedures be "reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of [the] Association." Rule 3010 also states that a member's review of trading activity must be "reasonably designed to assist in detecting and preventing violations . . . ." The standard of "reasonableness" is determined based on the particular circumstances of each case. In re Christopher Benz, 52 S.E.C. 1280 (1997); In re Consolidated Investment Services, Inc., 52 S.E.C. 582 (1996); In re Rita H. Malm, 52 S.E.C. 64 (1994). The burden is on the staff to show that the respondent's procedures and conduct were not reasonable. In re Wedbush Securities, Inc., 48 S.E.C. 963 (1988). It is not enough to demonstrate that an individual is less than a model supervisor or that the supervision could have been better. In re Arthur James Huff, 50 S.E.C. 524 (1991); In re Louis R. Trujillo, 49 S.E.C. 1106 (1989).

The original DBCC decision held that Lobb violated Conduct Rules 2110 and 3010 because (1) he had failed to contact the customer and (2) he had failed to notify Oppenheimer's New York compliance office about the unsuitable trading. After hearing new evidence that Lobb had contacted Holeman each time he took corrective action, the DBCC issued its Supplemental Decision reaffirming its original finding that Lobb had violated Conduct Rules 2110 and 3010. The DBCC based its Supplemental Decision solely on Lobb's failure to contact the customer. We must therefore decide whether Lobb's decision to curtail the excessive trading in VB's account, without calling VB, was "reasonable" under the circumstances.

A supervisor's failure to contact a customer can constitute a violation of the supervision rules under certain circumstances. For instance, a supervisor who has notice of some trading irregularities but opts not to contact a customer may violate the supervision rules if he or she fails to discover a violation that could have been discovered through customer contact. See In re Bradford John Titus, 52 S.E.C. 1154 (1996) (supervisors failed to supervise properly where they did not contact customers despite evidence of churning and where customer contact might have alerted supervisors to excessive trading in customers' accounts); see also In re Albert Vincent O'Neal, 51 S.E.C. 1128 (1994) (supervisor failed to supervise reasonably where he failed to contact customers to determine whether trading strategy was suitable and thereby allowed unsuitable trading to continue). The same holds true for a supervisor who discovers "red flags" and does not contact the customer, but instead relies solely on the broker's representations that the trading is consistent with the customer's objectives.[16] Similarly, supervisors who fail to contact customers in accordance with firm procedures that expressly require customer contact may violate the supervision rules. See e.g., In re Shearson Lehman Hutton Inc., 49 S.E.C. 1119 (1989) (supervisor failed to supervise reasonably where he did not contact customer despite evidence of unsuitable trading, where account was "highlighted" and where Shearson's policy mandated customer contact for "highlighted" accounts). A member firm's failure to require customer contact can under some circumstances also constitute a violation of the supervision rules by the member firm.[17]

Turning to the particular facts of this case, we note that Lobb's supervision was designed to, and did, detect "red flags" in VB's account. Lobb met with Vaughan on the same day that Vogel brought the excessive trading to his attention. Lobb told Vaughan to reduce the margin debit and purchase only "blue chip" stocks on a cash basis, and Lobb instructed Vogel to monitor the account daily. On the following business day, Lobb called Holeman, Oppenheimer's Compliance Director in New York, to discuss the action that he had taken, and Holeman agreed with Lobb's approach. Vaughan initially complied with these instructions and engaged in fewer transactions. A few months later, when Lobb learned that Vaughan had purchased a speculative stock for VB's account, Lobb responded by imposing additional restrictions on Vaughan. Lobb ordered Vaughan to clear each trade before execution with either him or Vogel. Again, Lobb called Holeman in New York and obtained his approval. Lobb's actions ultimately contributed to Vaughan's resignation from Oppenheimer.

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[16] See In re Michael H. Hume, 52 S.E.C. 243 (1995) (supervisor violated Conduct Rule 3010 where he relied solely on the broker's unverified representations that excessive trading in a customer's account was consistent with customer's objectives and he failed to notify his superiors or take any other action); In re Robert Hoffman Walston & Co., Inc., Admin. Proc. File No. 3-3492 (Initial Decision) (June 28, 1974) (supervisors failed to supervise reasonably where they merely accepted broker's assurances and did not take action to discover churning); In re Bradford John Titus, supra (supervisors failed to supervise reasonably where they merely accepted brokers' representations and took no corrective action despite evidence of churning).

[17] See In re Consolidated Investment Services, Inc., Admin. Proc. File No. 3-8312 (Initial Decision No. 59) (Dec. 12, 1994) (firm's supervisory procedures were inadequate because they did not require customer contact and violations would have been detected had customers been contacted); In re Paine, Webber, Jackson & Curtis, 43 S.E.C. 1042 (1969) (firm's supervisory procedures inadequate where they did not require customer contact and where customer contact would have enabled supervisor to discover violations); cf. In re NYLife Securities, Inc., Exchange Act Rel. No. 40459 (Sept. 23, 1998) (firm's offer of settlement accepted where firm failed to enforce its customer contact requirement, and had requirement been enforced, supervisor might have detected violations).

Oppenheimer's procedures did not require customer contact, but rather gave Lobb discretion to contact the customer or to take some other corrective action, such as limiting the types of stocks traded in the account or prohibiting certain types of transactions.[18] According to Lobb, he chose the latter approach because he had already determined that the trading in VB's account was unsuitable. Lobb stated that he therefore did not need to contact VB to determine whether she understood the trading strategy that Vaughan had been employing. Lobb assumed that she did not understand, and he refused to allow Vaughan to continue with that strategy. Lobb testified that even if she had understood the trading strategy, he would not have allowed it to continue. Lobb also testified that because VB had been a customer of Vaughan's for several years, and had traveled with him from firm to firm, he believed that Vaughan was the point of control for the account. He therefore took action through Vaughan to turn the account around.

We find that Lobb's testimony was credible, and we hold that Lobb's conduct was reasonable under the particular circumstances of this case.[19] Lobb discovered the unsuitable trading, and he took immediate action to prevent further violations. Oppenheimer's procedures gave Lobb discretion to call the customer or take other remedial action.[20] He chose to direct

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[18] We note that Oppenheimer, which was not charged in this case, revised its written supervisory procedures in 1997. The new procedures require supervisors to contact customers, either in person or by telephone, when suitability issues arise.

[19] See In re Louis R. Trujillo, supra (Commission dismissed proceedings against supervisor whose conduct was not "unreasonable" under the circumstances even though he failed to detect some irregularities); In re Quest Capital Strategies, Inc., Admin. Proc. File No. 3-8966 (Initial Decision No. 141) (Apr. 12, 1999), appeal filed (May 3, 1999) (Commission dismissed proceedings against supervisor who acted immediately and in accordance with Quest's compliance procedures); In re Patricia Ann Bellows, Admin. Proc. File No. 3-8951 (Initial Decision No. 128) (July 23, 1998) (Commission dismissed proceedings against supervisor whose conduct was "not perfect" but was reasonable under the circumstances); see also In re Arthur James Huff, 50 S.E.C. at 528 (the Commission has made clear that "what may be a reasonable discharge of supervisory duties in one case can be unreasonable in another"); cf. In re Quest Capital Strategies, Inc., supra, ("the Commission's 'decisions have been careful not to substitute the knowledge gleaned with hindsight, of actual wrongdoing by someone under a supervisor's control, for an assessment of whether the supervisor's conduct was proper under the circumstances'") (quoting In re James H. Thornton, Exchange Act Rel. No. 41007 (Feb. 1, 1999)(concurring opinion of Commissioner Unger)(citing In re Louis R. Trujillo, supra)).

[20] A supervisor's adherence to his or her firm's supervisory procedures will not necessarily shield the supervisor from liability, but it is a factor to be considered in determining whether supervision was reasonable. Under the facts of this case, we find that Lobb's compliance with Oppenheimer's procedures, coupled with the other steps he took to control trading in VB's account, constituted a reasonable response to the situation.

Vaughan to stop the excessive trading and the purchase of speculative stocks. Lobb acted in accordance with Oppenheimer's procedures, and immediately consulted with and received the approval of Holeman each time he took corrective action. Under these circumstances, we cannot find that Lobb's conduct was unreasonable.[21]

Accordingly, the DBCC findings are reversed, the complaint is dismissed, and the sanctions are set aside.[22]

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Senior Vice President
and Corporate Secretary

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[21] The Staff argues that the Commission's recent acceptance of an offer of settlement in In re David J. Glover, Exchange Act Rel. No. 40508 (Sept. 30, 1998), mandates a finding of violation in this case. The Glover case is a settlement, however, and it therefore does not control the outcome here.

[22] We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.