BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of	
District Business Conduct Committee for District No. 3,	DECISION
Complainant,	Complaint No. C3A960040
vs.	District No. 3 (DEN)
Cindy M. Goldberg Aurora, Colorado	Dated: May 13, 1998
and	
Denver, Colorado,	
Respondent.	

This matter was called for review pursuant to NASD Procedural Rule 9312.[1] After a review of the entire record in this matter, we affirm the findings of the District Business Conduct Committee for District No. 3 ("DBCC") that Cindy M. Goldberg ("Goldberg") effected an unauthorized transaction in violation of Conduct Rule 2110. We increase the sanctions imposed on Goldberg to a censure and a $2,500 fine.

[1] The National Business Conduct Committee ("NBCC") of NASD Regulation, Inc. called this case for review to determine whether the sanctions imposed by the District Business Conduct Committee for District No. 3 ("DBCC") were appropriate given the DBCC's finding that Goldberg effected an unauthorized transaction. This matter was decided by the National Adjudicatory Council, which, as approved by the Securities and Exchange Commission, became the successor to the NBCC on January 16, 1998.

Background

Goldberg entered the securities industry in 1984. From January through October 1994, she was associated with Paramount Investments International, Inc. ("Paramount" or "the Firm"). Goldberg was registered as a general securities principal during the time period relevant to this matter. She currently is not associated with any member of this Association.

Facts

Customer AS opened a securities account at Paramount in February 1994. Two representatives, Goldberg and Terrence Buttler ("Buttler"), were assigned to AS's account. On May 9, 1994, AS purchased 700 shares of High Plains Corporation ("High Plains") stock. On May 27, 1994, High Plains issued a 20 percent stock dividend, increasing AS's total shares to 840. On August 18, 1994, Goldberg sold all 840 shares of AS's High Plains stock. AS made a profit on the transaction of $1,700 or approximately 23 percent. The following day, August 19, 1994, Goldberg telephoned AS. AS was not home, but Goldberg left a message with AS's husband, stating that Goldberg had sold the 840 shares of High Plains.

In a letter dated January 19, 1995, AS complained to the NASD that Goldberg had sold the High Plains stock without her permission. AS's complaint letter prompted the investigation that led NASD Regulation District No. 3 to file the complaint in this action.

The parties do not dispute that Goldberg sold AS's High Plains stock without contacting AS immediately before the sale and receiving specific authorization to sell. The parties agree that AS first learned of the sale when she received Goldberg's message the following day. Beyond these events, the parties presented conflicting evidence as to whether AS authorized the stock sale.

AS testified that she had not authorized Goldberg to sell High Plains. She further testified as follows: AS did not authorize the joint representative on the account, Buttler, to sell High Plains. AS gave neither Goldberg nor Buttler discretion to sell High Plains at any preset price. She did not give blanket authority to sell stock in her account when she opened the account, and she did not give authority to sell the High Plains stock when she purchased it.

Goldberg testified that she believed AS had authorized the sale because, as a practice, Paramount's registered representatives discussed with all customers when the representatives opened accounts that the Firm might need to react to movements in the market and sell a customer's stock if it rose or fell approximately 20 percent. Goldberg also claimed that she routinely discussed the conditions under which the Firm would sell whenever a customer purchased stock. As to the sale of AS's High Plains stock, Goldberg testified that when she was unable to contact AS, she asked Buttler what to do. Goldberg testified that Buttler, whom she described as her boss, instructed her to sell the stock. Goldberg admitted, however, that AS had not given Goldberg or Buttler written authorization to exercise discretion in handling her account.

Discussion

The DBCC's finding that Goldberg sold AS's stock without authorization was based on its finding that AS's testimony was credible and that Goldberg's conflicting testimony was not credible. We give "considerable weight" to the credibility determinations of the DBCC when, as here, it actually heard the testimony of the witnesses. In re Christopher J. Benz, Exchange Act Rel. No. 38440 (Mar. 26, 1997); In re Frank J. Custable, 51 S.E.C. 643, 648 (1993); In re Jonathan Garrett Ornstein, 51 S.E.C. 135, 137 (1992). Based on our review of the hearing transcript, we uphold this credibility determination by the DBCC.

We find that the evidence squarely supports the DBCC's finding that Goldberg sold the High Plains stock without AS's authorization. AS testified without qualification that she had not given prior authorization to Buttler or Goldberg to sell High Plains. While testifying, AS also authenticated a declaration that she signed on July 1, 1996, during NASD Regulation's investigation of this matter. Although AS completed her declaration more than nine months before the DBCC hearing, her written statement was exactly the same as her testimony before the DBCC.

We find Goldberg's claim that she had blanket authorization to sell any stock in AS's account to lack credibility. AS did not give written authorization to Goldberg or Buttler to use discretion in handling her account. To handle AS's account as Goldberg described, Goldberg needed written authorization. See Conduct Rule 2510. Moreover, Goldberg gave no specific details to support her claim that AS verbally gave her discretion in handling the account.

As to Goldberg's claim that Buttler instructed her to sell High Plains, we credit this testimony. Goldberg's testimony was corroborated by the testimony of Paramount's office assistant. Goldberg, however, should not have followed the instructions of a joint representative on the account because she should have known that AS did not authorize Buttler to sell her stock. First, Goldberg knew that Buttler did not have written authorization from AS regarding her account. Second, selling stock from AS's account without discussing the sale with AS was inconsistent with previous stock sales in AS's account. On the two previous occasions when Goldberg recommended selling stock from AS's account, AS authorized the sales before Goldberg effected the transactions.

When Goldberg sold the stock, she was a registered principal. As such, she was required to comply with the rules of the NASD. See Carter v. SEC, 726 F.2d 472, 474 (9th Cir. 1983) (per curiam) (registered representative presumed as a matter of law to have knowledge of NASD rules). Goldberg should have told Buttler that she needed AS's authorization to sell the stock. Goldberg knew that Buttler had not recently spoken with AS. Goldberg had no reasonable basis for believing that AS had given authorization to Buttler.[2] By following Buttler's instructions, Goldberg executed an unauthorized trade just as completely as if she had acted totally on her own.

---

[2] Goldberg testified that she overheard one side of a telephone conversation between Buttler and AS that took place months before the sale at issue here. Because Goldberg did not hear AS give discretion to Buttler, we find that this conversation does not provide Goldberg with a defense.

In summary, we agree with the DBCC that AS was a more credible witness than Goldberg on the issue of whether AS authorized Goldberg to sell her stock.

Sanctions

In imposing sanctions of a censure and a $2,500 fine, we have considered that although unauthorized trading is serious misconduct, several circumstances make this case unique among unauthorized trading cases. The arrangement between Buttler and Goldberg was that Goldberg received no commissions for AS's account. Accordingly, Goldberg received no commission for the sale of the High Plains stock. Goldberg's conduct is therefore unlike a typical unauthorized trading case, in which the registered representative profits from an unauthorized trade. Moreover, although we find that Goldberg's reliance on Buttler's instruction to sell the stock was unjustified, Buttler's role in this transaction made Goldberg's misconduct less severe. We find that these circumstances are mitigating.

We also note that this case involved only one unauthorized trade in one customer's account. In addition, Goldberg has no disciplinary history. In light of all of the circumstances, we find that the appropriate sanctions are different from those suggested by the NASD Sanction Guidelines ("Guidelines") for unauthorized transactions.[3] We impose a censure on Goldberg and a $2,500 fine. We conclude that Goldberg did not engage in this activity in order to earn a commission but rather that she committed a mistake in judgment.[4]

Accordingly, we order that Goldberg be censured and fined $2,500.

On Behalf of the National Adjudicatory Council,

____

Joan C. Conley, Corporate Secretary

---

[3] The smallest sanction suggested by the applicable Guideline is a $5,000 fine. See Guidelines (1996 ed.) at 56 (Unauthorized Transactions).

[4] 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.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.

NASDR Direct: (202) 728-8853
NASDR Fax: (202) 728-8264

May 13, 1998

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Cindy M. Goldberg
Aurora, Colorado

Cindy M. Goldberg
Denver, Colorado

Re: Complaint No. C3A960040: Cindy M. Goldberg

Dear Ms. Goldberg:

Enclosed herewith is the Decision of the National Business Conduct Committee in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:
Office of the Secretary
U.S. Securities and Exchange
Commission
450 Fifth Street, NW, Stop 6-9
Washington, DC 20549

The address of NASD Regulation is:
Office of General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley
Corporate Secretary

Enclosure

cc: Jacqueline Whelan, Esq.