

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION, INC.

In the Matter of

REMAND ORDER

District Business Conduct Committee
For District No. 6

Complaint No. C06950004

District No. 6

Complainant,

Dated: January 20, 1998

vs.

Clinger & Co., Inc.
Houston, Texas

and

Norman E. Clinger
Houston, Texas

Respondent.

This matter was remanded to the NASD by the Securities and Exchange Commission ("SEC" or "Commission") in an order dated December 3, 1997, for reconsideration of the fine. The SEC's decision was issued in conjunction with the Commission's review of a decision of the National Business Conduct Committee ("NBCC") dated November 12, 1996, in which the Firm and Clinger were censured and jointly and severally fined \$7,500. In addition, the NBCC revoked the Firm's exemption from the requirement that it designate a financial and operations principal ("FINOP"), and required that the Firm retain the services of a qualified FINOP. The respondents appealed the NBCC's decision to the SEC. For the reasons set forth below, we remand this matter to the District Business Conduct Committee for District No. 6 ("DBCC") for further proceedings.

The NBCC reversed the DBCC's dismissal of cause two and found that the Firm, acting through Clinger, violated Exchange Act Rule 17a-3 ("Rule 17a-3") and Conduct Rules 2110 and 3110 (formerly Article III, Sections 1 and 21, respectively, of the Rules of Fair Practice) with

respect to the manner in which it accounted for its commissions receivable. The Commission agreed with the NASD's findings that Clinger and the Firm failed to keep accurate records, in violation of Rule 17a-3 and Conduct Rules 2110 and 3110. Although the Commission found recordkeeping violations, it did not find recordkeeping errors of the "scope and magnitude" found by the NBCC. The NASD charged, and the NBCC found, that the Firm, acting through Clinger, had erroneously booked \$48,247.06 in commissions between June 1994 and October 1994. The Commission stated that it could not conclude, on the record before it, that none of the commissions that the Firm had entered in its books were entered in accordance with proper accrual accounting.¹ The SEC, in ordering the remand, stated that the fine should be reconsidered in light of the Commission's findings of fact related to the Firm's recordkeeping violations.

Accordingly, this matter is remanded to the DBCC so that an evidentiary hearing can be held to determine whether the commissions at issue were booked in accordance with accrual accounting. We also direct the DBCC to reconsider the sanctions in light of the evidence and argument adduced in its proceeding on remand.

Joan C. Conley, Corporate Secretary

¹ The Commission stated that no evidence was presented as to "whether customers had the right to cancel transactions, whether [Clinger and the Firm] had completed all actions necessary to acquire a valid claim to a commission, or whether the mutual fund companies with which Clinger was effecting transactions could reject the transaction or alter the commission to be received."