

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE FOR THE
STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,)
 Petitioner,)
)
v.)
)
CONTINENTAL BROKER-DEALER CORP.,)
 Respondent.)

No. 2004-002

CONSENT ORDER

The Tennessee Securities Division (“Division”), Petitioner, and Respondent Continental Broker-Dealer Corporation (“Respondent”) agree to the entry of this Consent Order in accordance with the Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.*, which states that the Commissioner of Commerce and Insurance (“Commissioner”) from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood by all parties that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. Respondent, while neither admitting nor denying the allegations set forth herein, executes this Consent Order solely for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed, nor does it preclude additional proceedings by some other Division of the Commissioner against the Respondent based upon these facts or transactions addressed herein.

4. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

5. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.* (“Act”), places the responsibility for the administration of the Act on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

FINDINGS OF FACT

6. Continental Broker-Dealer Corp. ("Continental") is a business entity whose principal place of business is located at One Old Country Road, Carle Place, NY 11514. Continental is registered with this Division as a broker-dealer under Central Registration Depository ("CRD") number 14048.

7. David C. Cannata ("Cannata") is a citizen and resident of the State of New York whose home address is 16 Lincoln Avenue, Dix Hills, New York, 11746. Cannata is not registered with this Division as an agent of a broker-dealer. Cannata's CRD number is 2408845.

8. Charles W. Wannan ("Wannan") is a citizen and resident of the State of New York whose home address is 72 6th Street, Hicksville, New York, 11801. Wannan is registered with this Division as an agent of First Montauk, a Tennessee-registered broker-dealer, under CRD number 2453110.

9. On January 23, 2001, the Division received a complaint from Mr. Steve Denny ("Denny"), a citizen and resident of the State of Tennessee, regarding a brokerage account he had with Continental.

10. In November 1996, Denny was solicited by Cannata to open an account with Continental for the purpose of investing in the stock of Federal Express Corp ("FedEx"). After several calls by Cannata, Denny opened an account with Continental and purchased FedEx stock for two thousand one hundred sixty-three dollars (\$2,163). Denny's investment goals were recorded by Cannata on Denny's new account form as "PC" or "preservation of capital."

11. The pattern of investments in Denny's accounts included a substantial amount of trading on margin. In his initial new account application, Denny had signed an agreement for margin trading with Continental, although his investment goals called for "preservation of capital" trading strategy. Denny did not execute a written authorization with Continental which would have permitted Continental and/or its agents to use discretionary authority in Denny's account.

12. The trading on margin in Denny's continued until some point in 1999, at which time Denny received a call from Wannan informing him that Cannata had been terminated by Continental.

13. In or about the latter part of 1999, Denny had suffered significant losses in the account. Wannan told Denny that his main job was to take care of troubled accounts and that he could help recoup the losses. According to Denny, the account continued to lose a substantial portion of its value under Wannan's management. By approximately April of 2000, Denny's account had been reduced to a fraction of its former value.

14. After refusing to commit more money, Denny began complaining to Continental. Continental eventually agreed to settle this matter with Denny in September of 2000 for forty-four thousand six hundred twenty-three dollars (\$44,623).

15. In addition, at all times relevant to the events described herein, Continental failed to update the Form U-4 filing on the CRD system for Wannan disclosing that Wannan had been the subject of a customer complaint by Denny and that a settlement with Denny had been reached between Denny and Continental. At all times relevant to the events described herein, Continental failed to update the Form U-5 filing on the CRD system for Cannata disclosing that Cannata had been the subject of a customer complaint by Denny and that a settlement with Denny had been reached between Denny and Continental.

CONCLUSIONS OF LAW

16. Pursuant to Tenn. Code Ann. § 48-2-115(a), the responsibility for the administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

17. Pursuant to Tenn. Code Ann. § 48-2-116, the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of this Act and that such order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provision of the Act.

18. Tenn. Code Ann. § 48-2-112(a) provides, in pertinent part, that the Commissioner may by order deny, suspend or revoke any registration under the Act if the Commissioner finds that: (1) the order is in the public interest and necessary for the protection of investors; and (2) the applicant or registrant or, in the case of a broker-dealer, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions. . . (G) has engaged in dishonest or unethical practices in the securities business.

19. Tenn. Comp. R. & Regs. tit. Dep=t of Commerce and Ins., chs. 0780-4-3-.02(6)(a)3. & 0780-4-3-.02(6)(b)7., provides that when a broker-dealer or agent recommends to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situations and needs, and any other information known by the broker-dealer, it shall be deemed a dishonest or unethical business practice.

20. Tenn. Comp. R. & Regs. tit. Dep=t of Commerce and Ins., chs. 0780-4-3-.02(6)(a)4. & 0780-4-3-.02(6)(b)7., provide that when a broker-dealer or agent executes any transaction on behalf of a customer without the authority to do so, it shall be deemed a dishonest or unethical business practice.

21. Tenn. Comp. R. & Regs. tit. Dep=t of Commerce and Ins., chs. 0780-4-3-.02(6)(a)5 & 0780-4-3-.02(6)(b)7 provides that when a broker-dealer or agent exercises any discretionary power in effecting a transaction for a customer's account with first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time and/or price for the execution of orders, it shall be deemed a dishonest or unethical business practice.

22. Tenn. Comp. R. & Regs. tit. Dep=t of Commerce and Ins., ch. 0780-4-3-.02(6)(a)2. provides, in pertinent part, that “[i]nducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account” shall be considered, without limitation the term to such business practices, a dishonest or unethical business practice by a broker-dealer, as defined in Tenn. Code Ann. § 48-2-112(a)(2)(G).

23. Tenn. Comp. R. & Regs. tit. Dep=t of Commerce and Ins., ch. 0780-4-3-.02(6)(a)15., which states that when a broker-dealer violates any rule of a national securities exchange or national securities dealers association of which it is a member with respect to any customer, transaction, or business in this state, it shall be deemed to be a dishonest or unfair business practice.

24. Tenn. Code Ann. § 48-2-112(a), which states that the Commissioner may by order deny, suspend or revoke any registration under the Act if the Commissioner finds that (1) the order is in the public interest and necessary for the protection of investors; and (2) the applicant or registrant or, in the case of a broker-dealer, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions. . .(J) has failed reasonably to supervise such person's agents if the person is a broker-dealer.

25. Tenn. Code Ann. § 48-2-112(d) provides that, in pertinent part, in any case in which the Commissioner is authorized to deny, revoke, suspend the registration of a broker-dealer, investment adviser, or agent or applicant for broker-dealer, agent, or investment adviser registration, the Commissioner may in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction.

26. Based upon the findings of fact cited above and the conclusions of law contained herein, the Commissioner concludes that the actions of the Respondent are in violation of Tenn. Code Ann. § 48-2-112(a) and the rules and regulations cited above and that such actions provide grounds for an order that is necessary to carry out the provisions of the Act.

27. Respondent, while neither admitting nor denying the general stipulations, findings of fact and conclusions of law contained herein, hereby also acknowledges the Commissioner's authority to administer said statute and concedes that the Commissioner's entry of this Consent Order under the Act is reasonable and enforceable. Therefore, Respondent, in order to avoid any further expenses or costs associated with litigating this matter, hereby desire to enter into this Consent Order.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the waiver by Respondent of their rights to a hearing and appeal under the Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Order and that this Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Ann. § 48-2-116 of the Act that:

1. The Respondent shall make payment of a civil penalty to the Division's Investor Education Fund in the amount of ten thousand dollars (\$10,000.00), payable in the form of a cashier's check drawn upon a federally-insured bank or savings and loan institution, and shall make said payment within ten (10) days of the entry of this Consent Order by the Commissioner. Such payment by the Respondent should be made payable to the Tennessee Department of Commerce and Insurance and, if mailed, should be directed to the following address:

Tennessee Department of Commerce and Insurance
Attn: Kevin C. Bartels
Office of Legal Counsel
Davy Crockett Tower, 5th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243

2. The Respondent agrees to cease and desist in any further violations of the Act.

3. The Respondent agrees to fully comply with the Act and the rules promulgated thereunder.

4. The Respondent further acknowledges that should it fail to comply with the provisions of this Order, the Division may enforce this Order in the Chancery Court of Davidson County, Tennessee, pursuant to Tenn. Code Ann. § 48-2-119. In addition, the Division may impose additional sanctions and costs and seek other appropriate relief for violation of this Consent Order, subject to the Respondent's right to a hearing, pursuant to the Act and the Uniform Administrative Procedures Act, as amended, at Tenn. Code Ann. §§ 4-5-101 *et seq.*

IT IS FURTHER ORDERED that this Consent Order represents the complete and final resolution of and discharge of all administrative and civil, claims, demands, actions and causes of action by the Division against the Respondent for the alleged violations of the Act which relate specifically to all actions and/or omissions by the Respondent which are so described in this Consent Order. This Consent Order shall not be construed to apply to any other facts or circumstances other than to the facts set forth herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Continental Broker-Dealer Corporation affirmatively states that it has freely agreed to the entry of this Consent Order, that it has been advised that it may consult legal counsel in this matter, and has had the opportunity to consult with legal counsel should it have desired to do so, that it waives its right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof.

The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

SO ORDERED.

Entered this the 10th day of March, 2004.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

[Signature]

By: Michael Clements
Title: President
Continental Broker-Dealer Corp.
One Old Country Road
Carle Place, New York 11514
516-741-5400

[Signature]

Daphne D. Smith
Assistant Commissioner for Securities
Department of Commerce and Insurance
500 James Robertson Parkway
Sixth Floor, Davy Crockett Tower
Nashville, Tennessee 37243
615-741-2947

[Signature]

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