

BEFORE THE  
DIVISION OF SECURITIES  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
STATE OF WISCONSIN

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In the Matter of  
MATTHEW S. FREED

Respondent.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER

File No. S-97311(LX)

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On September 9, 1998, pursuant to a Notice of Hearing issued June 29, 1998 under sec. 551.61, Wis. Stats., I, as Designated Hearing Officer, held a prehearing conference in this proceeding. Staff members of the Licensing & Compliance Section and of the Enforcement Unit, Registration & Enforcement Section, of the Division of Securities, Department of Financial Institutions, State of Wisconsin, were present. The Respondent failed to appear, either in person or by telephone.

The staff, represented by Attorney David Cohen, moved for a finding of default pursuant to DFI-Sec 8.03, Wis. Adm. Code, and then made an offer of proof to substantiate the allegations in the staff's Petition for Hearing dated June 29, 1998. Based upon the staff's offer of proof, including documents provided and the affidavit of Attorney David A. Cohen, all of which I have made part of the record in this matter, I make the following Findings of Fact and Conclusions of Law for purposes of this proceeding as prescribed under sec. 227.47(1), Wis. Stats., and to provide the basis for issuance of the Decision and Order in this proceeding.

FINDINGS OF FACT

1. Matthew S. Freed ("Freed") was a securities agent (CRD #2788276) who, at all times material hereto, was licensed in Wisconsin pursuant to Ch. 551, Wis. Stats., with a last-known business address at GKN Securities Corp. Suite 1200, New York, NY 10006, and a residence address at 72-81 113<sup>th</sup> Street, Forest Hills, NY 11375, and is considered to be a party for purposes of review under sec. 227.53, Wis. Stats.
2. From November 1996 through February 1997, Freed was employed by The Thornwater Company L.P. ("Thornwater") as a securities agent.
3. From February 1997 through October 1997, Freed was employed by Northeast Securities, Inc. ("Northeast") as a securities agent.
4. On June 29, 1998, the staffs of the Licensing & Compliance Section and the Enforcement Unit, Registration & Enforcement Section, of the Division of Securities, Department of

Financial Institutions, State of Wisconsin, filed a Petition for Hearing with the Administrator of the Division of Securities in this matter.

5. On June 29, 1998, the Administrator of the Division of Securities caused a Notice of Hearing in this matter to be sent by certified mail, return receipt requested, to the Respondent at his residence address.
6. On July 9, 1998, the Designated Hearing Officer, Randall E. Schumann, received the green return receipt indicating that the Notice of Hearing had been received on July 2, 1998.
7. Pursuant to the Notice of Hearing, a prehearing conference was scheduled for Wednesday, September 9, 1998 at 10:00 am (CST) at the offices of the Division of Securities, such conference to be attended in person or by telephone by the Respondent and representatives of the Division of Securities.
8. The Notice of Hearing provided that failure to appear at the prehearing conference may be deemed a default, and that upon such a default the Designated Hearing Office may make a decision, enter an Order, or otherwise dispose of the case pursuant to DFI-Sec 8.03, Wis. Adm. Code.
9. Respondent failed to appear at the prehearing conference scheduled for September 9, 1998, and was therefore in default pursuant to DFI-Sec 8.03, Wis. Adm. Code.
10. Based on an analysis done by the staff of the Division of Securities, which analysis I find to be complete and accurate, while Freed was an employee of Thornwater he solicited securities transactions in account #715-01439, the account of a person in Wisconsin, so that the annualized cost-to-equity ratio in that account was 70% and the annualized turnover ratio was 2046%.
11. Based on an analysis done by the staff of the Division of Securities, which analysis I find to be complete and accurate, while Freed was an employee of Northeast he solicited securities transactions in account #176-10241, the account of a person in Wisconsin, so that the annualized cost-to-equity ratio in that account was 302% and the annualized turnover ratio was 4348%.
12. With respect to the transactions referred to in numbered paragraphs 10 and 11, Freed admitted in a letter received by the Division on January 20, 1998, that he engaged in discretionary trading in the customer's accounts even though he never had written discretionary authority over the account.
13. Pursuant to information contained in the Central Registration Depository of the National Association of Securities Dealers, Freed is the subject of one other complaint alleging unauthorized trading and one complaint that a check he wrote to reimburse a customer for

trading losses was returned for insufficient funds.

14. Pursuant to a letter mailed by Northeast Securities to Nancy Jackson, an Examiner with the Division, that firm felt that Freed's "style of doing business was [not] compatible with the firm's style: he was given the choice of changing his style or leaving the firm and he chose to leave the firm."

### CONCLUSIONS OF LAW

1. Based on Freed's failure without good cause to appear at the prehearing conference scheduled September 9, 1998 in this proceeding, I find him in default as defined in DFI-Sec 8.03, Wis. Adm. Code.

2. Based on the evidence presented by the staff, I find that the actions of Freed described in numbered paragraphs 10 and 11 above constitute trading in a customer's account that was excessive in size or frequency in view of the financial resources and character of the account, which actions constitute a "dishonest or unethical business practice" or "taking unfair advantage of a customer" pursuant to DFI-Sec 4.06(1)(b), Wis. Adm. Code, by Freed, through the operation of DFI-Sec 4.06(2)(i), Wis. Adm. Code, and provide a basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the revocation of Freed's Wisconsin securities agent license.

3. Based on the evidence presented by the staff, I find that the actions of Freed described in numbered paragraph 12 above constitute the exercise of discretionary power in effecting transactions for a customer's account without first obtaining written discretionary authority from the customer, which actions constitute a "dishonest or unethical business practice" or "taking unfair advantage of a customer" pursuant to DFI-Sec 4.06(1)(d), Wis. Adm. Code, by Freed, through the operation of DFI-Sec 4.06(2)(i), Wis. Adm. Code, and provide a basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the revocation of Freed's Wisconsin securities agent license.

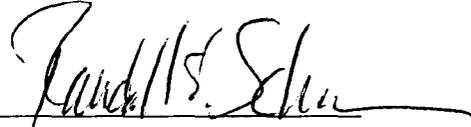
### DECISION AND ORDER

On the basis of the above-recited Findings of Fact and Conclusions of Law relating to the Respondent's default in failing to appear at the prehearing in this proceeding and the violations of the securities agent licensing provisions of the Wisconsin Uniform Securities Law providing a basis for denial, suspension or revocation of a securities agent's license under sec. 551.34(1)(g), Wis. Stats., I hereby determine and find under sec. 551.63(2), Wis. Stats., that it is appropriate in the public interest and for the protection of investors that an Order be issued revoking the Wisconsin securities agent license of Matthew S. Freed,

NOW THEREFORE, IT IS ORDERED pursuant to sec. 551.34(1)(g), and 551.61(1), Wis. Stats., that Matthew S. Freed's Wisconsin securities agent's license be revoked as of July 3, 1997, the day he was last licensed as a securities agent in Wisconsin.

DATED this 30<sup>th</sup> day of December, 1998.

(SEAL)



Randall E. Schumann  
Designated Hearing Officer

NOTICE: This Order is a final Order. Any petition for rehearing under sec. 227.49, Wis. Stats., must be filed with the Division in accordance with the requirements thereunder within 20 days after service of the Order. Any proceeding for judicial review under sec. 227.52 and 227.53, Wis. Stats., must be instituted by filing a petition in accordance with the requirements thereunder with the Division and the Dane County Clerk of Court within 30 days after service of the Order.