

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

In the Matter of
JAMES A. NICKELS

PETITION FOR ORDER
(CONSENT)

Respondent.

File No. S-05122(LX)

The staffs of the Bureau of Licensing & Compliance and the Bureau of Registration & Enforcement, of the Division of Securities, Department of Financial Institutions, State of Wisconsin have conducted an investigation in this matter pursuant to sec. 551.56, Wis. Stats., and as a result thereof allege as follows:

1. James A. Nickels is a licensed securities agent (CRD #347827) with a business address at 940 Maritime Dr, Suite 5 Manitowoc, WI 54220;
2. On September 21, 1993, the Wisconsin Office of the Commissioner of Securities issued a warning letter to Nickels regarding customer allegations of excessive trading and unauthorized trading;
3. On July 1, 1998, Nickels consented to the Wisconsin Division of Securities issuing an Order of Censure, Prohibition and Suspension of Securities Agent License against him for excessive trading and unauthorized trading;
4. As a result of the 1998 Order, Nickels had his securities agent license suspended for a period of 2 days;
5. Despite the warning letter and the suspension, Nickels continued to suggest trades in Unit Investment Trusts and mutual funds to his customers that were excessive for their accounts as follows:

Customer GS (regular account)

- a. Customer GS was born in 1925 and is retired from the US Navy.
- b. On August 15, 2000, Nickels recommended approximately \$10,000 each of two Unit Investment Trusts ("UITs"), First Trust Biotechnology Series 4 and First Trust Software Innovations 2000 Series 4;
- c. On October 11, 2000, Nickels recommended the sale of the Biotechnology Trust at a loss and the purchase of First Trust Life Sciences Series 2 UIT;

- d. On November 8, 2000, Nickels recommended the sale of the Life Sciences UIT and the purchase of Ranson Value Line #1 Strategy Trust Series 11 UIT;
- e. On May 10, 2001, Nickels recommended the sale of the Ranson Value Line UIT at a loss;
- f. From August 2000 to May 2001 the turnover ratio for this account was 312% (annualized);

Customer GS (IRA account)

- g. Eight UITs were bought and sold between the day the account opened, August 17, 2000, and June 29, 2001, with the UITs being held an average of 119 days;
- h. The turnover ratio in this account during this time was 455% (annualized);
- i. The commissions on this account of, on average \$28,000, were \$5795.67 in just the first 11 months of 2001. This account would have to generate a return of almost 21% just to break even.

Customer KB

- j. Customer KB was born in 1964, had no investment experience and told Nickels that while he wanted to keep most of his money safe, he was willing to risk 25-30% of it;
- k. Nickels marked the investment objective on the new account form as “aggressive growth” and proceeded to recommend stock trades that generated over \$11,000 in commissions from July 2004 to September 2005 on a \$63,000 account;

Customer BD

- l. At Nickels’ recommendation, the UITs and mutual funds in this account were held an average of 9 months before they were sold;

Customer MK

- m. On June 26, 2001 Nickels recommended the purchase of First Trust Utilities Income Series 3 UIT;
- n. On February 19, 2002, Nickels recommended the sale of this UIT at a loss and the purchase of the First Trust High Yield Corporate Closed End #5 UIT;

Customers OL and ML

- o. On October 11, 2002 customers OL and ML opened IRA accounts with Nickels;

- p. According to his New Account Form, OL was born in 1943 and had a primary objective of growth and medium risk tolerance;
 - q. During the time period of November 2002 to November 2003 the annual cost/equity ratio for this account (including \$45,000 placed in annuities) was 10% and without the annuity it was 39%;
 - r. ML's new account form said she was born in 1948 and had a primary objective of growth and medium risk tolerance;
 - s. The trades in ML's account were virtually identical to those in OLs;
6. Unit investment trusts and mutual funds are long term investment products; they are not designed for short term trading, in fact many contain Contingent Deferred Sales Charges to discourage quick trading;
7. Nickels actions, as described above are the inducing of trading in customers' accounts which is excessive in size or frequency in view of the financial resources and character of the account and are deemed to be, pursuant to DFI-Sec 4.06(2)(i), Wis. Adm. Code, "dishonest or unethical business practice" or "taking unfair advantage a customer" and provide a basis, under sec. 551.34(1)(g), Wis. Stats., for the revocation of Nickels' license;
8. Nickels also made recommendations to his clients that were unsuitable for his customers on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation as follows:

Customer BD

- a. Customer BD was born in 1940 and according to her New Account Form, wanted growth with high risk;
- b. Nickels invested BD's account almost exclusively in income producing UITs which produced a substantial amount of income and a substantial loss of principal;

Customers OL & ML

- c. While customers OL & ML's primary objective was growth, their secondary objective was income with moderate risk;
- d. During 2003, OL's \$60,000 account produced just \$40.36 in income and ML's \$98,000 account produced just \$126.78;

Customer GS

- e. GS's new account form stated that his investment objective in his IRA was income;
- f. During all of 2001 his, on average \$28,000 IRA, produced just \$123.60 in income;

Customer MK

- g. Customer MK was born in 1920 and his new account form stated that he wanted growth in his account;
 - h. The only investment recommended for his account was a high yield closed end fund;
9. Nickels' recommendations to BD, OL, and ML were without grounds to believe that the recommendations were suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and are deemed, pursuant to DFI-Sec 4.06(2)(i), Wis. Adm. Code, to be a "dishonest or unethical business practice" or "taking unfair advantage of a customer" and provide a basis, pursuant to sec. 55.134(1)(g), Wis. Stats for the revocation of Nickels license;
10. The following chart shows purchases and partial liquidations of annuities by some of Nickels' customers:

Customer	Purchase Date	Amount	Date Sold	Amount Sold	Fee incurred
KB	11/1/2001	\$85,000	6/1/2004	\$63,015.94	\$3,015.84
KW	4/25/2002	\$78,620	1/13/2005	\$59,548.01	\$3,548.01
OL	11/2/2002	\$35,000	6/21/2004	\$40,304.30	\$2,652.15
ML	11/8/2002	\$65,000	6/22/2004	\$57,535.22	\$3,752.61
OL	12/9/2002	\$10,000	6/21/2004		
SE	8/25/2003	\$85,000	5/11/2005	\$85,226.97	
SE	9/8/2003	\$25,000			
OL	11/6/2003	\$10,000			
ML	11/6/2003	\$11,000			
SE	11/21/2003	\$43,000	5/11/2005	\$21,365.19	
SE	11/21/2003	\$40,000			

11. Nickels course of conduct, in regularly recommending that his customer buy and then partially liquidate annuities is inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account which is deemed, pursuant to DFI-Sec 4.06(2)(i), Wis. Adm. Code, to be a "dishonest or unethical business practice" or "taking unfair advantage of a customer" and provide a basis, pursuant to sec. 55.134(1)(g), Wis. Stats for the revocation of Nickels license;

12. In connection with Nickels suggesting to his clients, including KB, OL, ML and KW that they purchase certain low priced securities, Nickels instructed his clients to sign a "Low Priced Stock Letter of Understanding;"
13. The Low Price Stock Letter of Understanding, states among other things that, "The purpose of this letter is to indemnify James A Nickels and Capital Financial Services, Inc. with respect to the following trade...By signing this letter I fully acknowledge that this trade was not in any way suggested or recommended by any of the above listed parties...I will not, under any circumstances, hold the above listed parties liable for any loss of value that occurs within this investment. I am solely responsible."
14. By having his clients sign these letters stating that the investments were the client's idea when the investments were suggested or recommended by Mr. Nickels and then indemnifying him for his advice, Nickels committed an act, practice or course of business which would operate as a fraud or deceit upon his customers in violation of sec. 551.41(3), Wis. Stats.
15. In addition to the letters above, Nickels would mark many trades on his trade blotter as "unsolicited" when, in fact, he had solicited the client to make the trade;
16. By falsely completing his trade blotter, Nickels committed an act, practice or course of business which would operate as a fraud or deceit upon his customers in violation of sec. 551.41(3), Wis. Stats.

THEREFORE, the staffs of the Bureau of Licensing & Compliance and Registration & Enforcement petition the Administrator of the Division of Securities for the issuance of THE attached Suspension Order

DATED this 21st day of December, 2006



Helen E. Kluever
Examiner
Bureau of Licensing & Compliance



David A. Cohen
Supervising Attorney
Bureau of Registration & Enforcement