

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

File No. 09-141

**ORDER GRANTING DEPARTMENT'S MOTION
FOR RECONSIDERATION ON MOTION FOR SUMMARY DECISION, GRANTING
DEPARTMENT'S MOTION FOR SUMMARY DECISION, AND DENYING
RESPONDENT FRAGER'S CROSS-MOTION FOR SUMMARY DECISION**

This matter having come before the Hearing Officer on the Department's Motion for Reconsideration on Motion for Summary Decision and Respondent Frager's Cross-Motion for Summary Decision. Such motions are filed pursuant to the authority of The Administrative Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Oklahoma Rules"), Rule 660:2-9-3. The Hearing Officer having considered said motions and received argument by the parties pertaining thereto, hereby enters the following Findings of Fact, Conclusions of Law and Summary Decision:

Findings of Fact

1. Respondent Geary Securities, Inc. ("Geary" or the "Firm") at all times material hereto was a broker-dealer registered with the Oklahoma Department of Securities pursuant to the provisions of the Oklahoma Uniform Securities Act of 2004, Okla. Stat. tit. 71, §§1-101 - 1-701, and the Oklahoma Rules adopted there under. Geary maintained a clearing relationship with Pershing, LLC ("Pershing") through which securities transactions affected on behalf of customers of Geary were cleared, and operated as what is known in the industry as a fully disclosed introducing broker. Geary was further subject to the provisions of the Securities Exchange Act of 1934, 15 U.S.C. §78a *et seq.* ("Exchange Act"), and rules of the Securities and Exchange Commission ("SEC") adopted there under.

2. Geary was a member of the Financial Industry Regulatory Association (“FINRA”) and had entered into a Member Agreement with FINRA (“Member Agreement”) that made Geary subject to FINRA regulatory supervision and rules, and specified that the Firm would at all times maintain a net capital of no less than \$250,000, which agreement was in effect during February 2010.

3. At all times material hereto Respondent Frager (“Frager”) was registered with FINRA as the Limited Principal – Financial and Operations (“FinOP”) for Geary. As such he functioned as the Firm’s chief financial and operations officer, and was responsible for calculation of the Firm’s net capital and compliance with all financial regulatory and reporting requirements to FINRA and to the SEC to which the Firm was subject.

4. The SEC Net Capital Rule, Rule 15c3-1(a)(2)(i) requires a broker-dealer at all times to maintain a net capital of no less than \$250,000 if it carries customer accounts and receives funds from customers.

5. Geary’s Firm Policies and Procedures Manual in effect during February 2010 provided that the Firm was required to maintain a minimum net capital of \$250,000, and that the Firm was permitted to accept checks made payable to itself and securities from customers (See Department’s Motion, Exhibit B, Sections 2.104 and 2.105 A).

6. Frager’s Answer to the Enforcement Division Recommendation admitted that for the periods covered by the action Geary’s net capital requirement was \$250,000. (See Frager Answer, ¶14)

7. During February 2010 Geary maintained an “electronic deposit system” (“EDS”) through which checks received by the Firm from customers would be electronically deposited by the Firm directly into an account maintained for Pershing, regardless of whether the checks were made payable to the Firm or to Pershing.

8. Prior to July 2010 Geary did not have any supervisory or compliance procedures in place to prevent customers from delivering to the Firm checks made payable to the Firm, or to address the actions the Firm would take if its customers inadvertently delivered checks to the Firm made payable to the Firm.

9. Prior to July 2010 Geary had not notified its customers that it was not receiving funds from customers of the Firm, and that customers should transmit all funds directly to Pershing for transactions affected on behalf of customers through the Firm. Additionally, prior to July 2010 confirmation statements for transactions affected through Geary and transmitted to its customers did not advise the customers to make payments for such transactions directly to Pershing.

10. During February 2010 Geary received checks from customers made payable to the Firm, which were deposited into the EDS. Geary neither returned the checks to the subject customers with instructions to reissue the checks to Pershing, nor did the Firm notify such customers that they should make all payments directly to Pershing.

11. Starting on February 10, 2010 through the end of February Geary's net capital was calculated by the Firm on a daily basis. Such calculations showed that on fifteen of the nineteen business days during February 2010 Geary's net capital was less than \$250,000.

12. During February 2010 Geary received checks from customers made payable to the Firm on the following business days at times when the Firm's net capital was less than \$250,000:

February 2 - 5, 2010

February 8 - 10, 2010

February 12, 2010

February 16 - 19, 2010

February 23 - 25, 2010

13. On or about February 26, 2010, Geary received additional funds so that its net capital then exceeded \$250,000.

14. During February 2010 Frager, as the Firm's FinOP, filed notices with FINRA pursuant to SEC Rule 17a-11(b) reporting that the net capital of the Firm was less than the minimum net capital required by SEC Rule 15c3-1. Such notices were filed with FINRA on February 10, 12 and 26, 2010, and in each case advised FINRA that the Firm's net capital was less than \$250,000. Such notices covered the period from January 31, 2010 through February

25, 2010. In each such notice Frager stated that the Firm's net capital requirement was \$250,000.

15. On February 12 and 26, 2010 Frager, as the Firm's FinOP, filed notices with FINRA pursuant to SEC Rule 17a-11(c)(3) reporting that the Firm's net capital was below 120% of its minimum net capital requirement. In both such notices Frager stated that the Firm's net capital requirement was \$250,000. .

16. SEC Rule 17a-11(b) and SEC Rule 17a-11(g) require that a broker-dealer give notice of any net capital deficiency on the same day that such occurs to the SEC and to its primary self-regulatory organization (in this case FINRA). Additionally, SEC Rule 17a-11(c) requires that a broker-dealer give notice to the SEC and FINRA promptly and in no case more than twenty-four hours after the occurrence of a net capital deficiency as specified in SEC Rule 17a-11(c)(3).

17. As the Firm's FinOP Frager was responsible for preparing and insuring transmission of the required notices of the Firm's net capital deficiencies that occurred during February 2010 to the SEC and FINRA pursuant to SEC Rule 17a-11.

18. Pursuant to the Exchange Act, §78o(c)(3)(A), a broker-dealer that is deficient in its capital under SEC Rule 15c3-1 is required to cease its securities business while such capital deficiency exists.

19. At all times during February 2010 Geary continued to engage in business and to hold itself out to the public as a broker-dealer, and did not in any manner suspend or restrict the conduct of its business or activities. Frager as the Firm's FinOP took no steps to advise the management of Geary to cease or restrict Geary's business activities during the time when the Firm had net capital deficiencies during February 2010.

20. On July 13, 2010 Frager, as the Firm's FinOP, transmitted a letter to FINRA requesting permission to amend the Member Agreement with FINRA, to reduce the Firm's capital requirement pursuant to SEC Rule 15c3-1 from \$250,000 to \$100,000. Frager further advised FINRA in such letter that the Firm would amend its written supervisory policies and procedures to comply with the provisions of said rule as to the receipt of customer checks.

21. On July 26, 2010 Geary executed an amended Member Agreement that required the Firm to maintain a minimum net capital of \$100,000 pursuant to SEC Rule 15c3-1(a)(2)(ii), and to operate the Firm pursuant to SEC Rule 15c3-3(k)(2)(ii) of the Customer Protection Rule, thereby becoming what is referred to in the industry as a "\$100,000 broker".

22. Geary's BD Written Supervisory Policies and Procedures ("Policies and Procedures") effective July 27, 2010 (Exhibit E to Department's Motion), provided in relevant part as follows:

"As a 100,000 broker, [the Firm is] required to have all customer checks made payable to our clearing firm. We will not accept check[s] made payable to Geary Securities, the broker, or any other employee of Geary Securities or to someone other than the account holder.

In such instances, receipt of the check is IMMEDIATELY logged onto our Checks Received/Disbursed log and returned to the client with reissue instructions."

In other words, in July 2010 as part of requesting permission from FINRA to become a \$100,000 broker Geary made amendments to its Supervisory Policies and Procedures to prohibit the Firm from thereafter receiving checks from customers made payable to anyone other than its clearing broker, Pershing, and requiring that checks received by the Firm but made payable to the Firm would be returned to the customer.

23. On July 27, 2010 Althea Roberts, Senior Vice-President/Compliance of Geary notified Pershing by letter that the Firm had been given permission to change its net capital requirement from \$250,000 to \$100,000. In such letter Ms. Robert's further advised Pershing that "[b]ecause of this, all checks received by Geary Securities must be made payable to our clearing firm. FINRA is asking that we provide to them a sample confirmation that will instruct our customer[s] to make all checks payable to our clearing firm. The confirmation now in use does not inform the customer [to whom] to make their check payable."

24. The clear implication of Geary's July 2010 amendments to the Member Agreement and to the Firm's Supervisory Policies and Procedures is that prior to such time Geary had held itself out to the public and operated as a "\$250,000 broker" that received customer funds, which required the Firm to maintain a net capital of at least \$250,000 pursuant to SEC Rule 15c3-1(a)(2)(i) and Geary's Member Agreement.

25. Geary had established a "Special Account" as contemplated by SEC Rule 15c3-3(k)(2)(i), and such account was available during February 2010. However, Geary did not utilize such account for the deposit of any funds received from customers.

26. Oklahoma Rule 660:11-5-17 requires that a broker-dealer registered under the Oklahoma Uniform Securities Act must maintain net capital of no less than the highest requirement applicable to such broker-dealer as specified in SEC Rule 15c3-1.

27. Oklahoma Rule 660:11-5-42(b)(1) requires that a broker-dealer registered under the Oklahoma Uniform Securities Act and its agents shall not violate a federal securities statute or rule to which they are subject with respect to business conducted in the State.

28. There is no substantial controversy as to issues of material fact remaining between the parties as relates to the issues presented by the Department's Motion and Respondent Frager's Cross Motion, and therefore the entry at this time of a Summary Decision in this matter is appropriate.

Conclusions of Law

29. On at least fifteen business days during February 2010 Geary received funds from customers as contemplated by SEC Rule 15c3-1(a)(2)(i), by virtue of having received checks from customers made payable to the Firm.

30. SEC Rule 15c3-1 required that Geary maintain a net capital of at least \$250,000 during the period of January 31 to February 25, 2010.

31. Geary was in violation of SEC Rule 15c3-1(a)(2)(i) at various times during the month of February 2010, in that it received funds from customers at a time when its net capital was less than \$250,000.

32. The existence of a Special Account established pursuant to SEC Rule 15c3-3(k)(2)(i) alone does not allow a fully disclosed introducing broker, as Geary was operating in February 2010, to claim exemption pursuant to such rule.

33. During February 2010 Geary did not qualify for the exemption provided under SEC Rule 15c3-3(k)(2)(i) of the Customer Protection Rule, as it received customer funds, and did not have in place policies and procedures to prohibit the receipt of customer checks made

payable to the Firm and requiring any such checks received inadvertently to be returned to the subject customer. Accordingly, during February 2010 Geary did not qualify pursuant to SEC Rule 15c3-1(a)(2)(ii) to maintain a net capital of at least \$100,000.

34. The net capital deficiency notices filed by Frager with FINRA pursuant to SEC Rule 17a-11(b) on February 10, 12 and 26, 2010, were delinquent in that they were not filed timely in accordance with SEC Rule 17a-11(b) and SEC Rule 17a-11(g).

35. The net capital deficiency notices filed by Frager with FINRA pursuant to SEC Rule 17a-11(c)(3) on February 12 and 26, 2010, were delinquent in that they were not filed timely in accordance with SEC Rule 17a-11(c).

36. Geary, and Frager as the Firm's FinOP, failed to timely file the required notices of the Firm's capital deficiencies which occurred during February 2010 with the SEC and FINRA as required by SEC Rule 17a-11, and therefore they were in violation of such rule.

37. Frager as the Firm's FinOP failed to take action to cause Geary to cease its business as a broker-dealer during February 2010 when the net capital of the firm was less than that required by SEC Rule 15c3-1, and therefore was in violation of such rule and of §78o(c)(3)(A) of the Exchange Act.

38. Geary was in violation of Oklahoma Rule 660:5-17 by operating as a broker-dealer in Oklahoma at various times during February 2010 when the Firm's net capital was less than that required by SEC Rule 15c3-1 and Oklahoma Rule 660:7-17.

39. Geary, and Frager as the Firm's FinOP, violated Oklahoma Rule 660:11-5-17 and Oklahoma Rule 660:11-5-42(b)(1), by not timely reporting the net capital deficiencies of the Firm that occurred during February 2010 to the SEC and FINRA as required by SEC Rule 17a-11.

WHEREFORE, the Hearing Officer enters the following Summary Decision:

A. The Department's Motion for Reconsideration on Motion for Summary Decision is hereby GRANTED.

B. Respondent Frager's Cross-Motion for Summary Decision is hereby DENIED.

C. The Department's Motion for Summary Decision is hereby GRANTED, and a Summary Decision against Respondent Frager is entered as follows:

1) Respondent Frager violated Oklahoma Rule 660:11-5-42(b)(1), in that as the Firm's FinOP he failed to timely file the required notices with the SEC and FINRA of Geary's net capital deficiencies which occurred during the period of January 31 to February 25, 2010 as required by SEC Rule 17a-11, as outlined above; and

2) Respondent Frager violated Oklahoma Rule 660:11-5-17, in that as the Firm's FinOP he failed to take action to cause the Firm to cease its business as a broker-dealer conducted in the State during the period of January 31 to February 25, 2010 at such times as the Firm was in violation of net capital requirements as specified under SEC Rule 15c3-1, as outlined above.

Dated September 17, 2012.



Bruce R. Kohl
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of September, 2012, a true and correct copy of the *Order Granting Department's Motion for Reconsideration on Motion for Summary Decision, Granting Department's Motion for Summary Decision, and Denying Respondent Frager's Cross-Motion for Summary Decision* was emailed and mailed, with postage prepaid, to:

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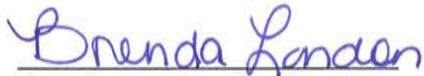
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