

DENISE VOIGT CRAWFORD
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JACK D. LADD
MEMBER

SSB Docket No. 02-26

IN THE MATTER OF THE
DEALER REGISTRATION OF
WUNDERLICH SECURITIES, INC.
AND THE AGENT REGISTRATION OF
MICHAEL BARRETT SUTTLE

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Order No. CAF-1471

TO: Gary Kent Wunderlich, CEO
Wunderlich Securities, Inc. (CRD # 2543)
6305 Humphreys Boulevard, Suite 210
Memphis, Tennessee 38120-2300

Michael Barrett Suttle (CRD # 2639519)
Wunderlich Securities, Inc.
2000 West Sam Houston Parkway South, Suite 1750
Houston, Texas 77042

DISCIPLINARY ORDER

Be it remembered that Wunderlich Securities, Inc. ("Respondent Wunderlich"), by and through its President, Gary Kent Wunderlich, and Michael Barrett Suttle ("Respondent Suttle"), individually, appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this Order and Undertaking, and without admitting or denying the Findings of Fact and the Conclusions of Law contained herein, except Findings of Fact one through three, which are deemed admitted.

FINDINGS OF FACT

1. Respondents have waived (a) Respondents' right to notice and hearing in this matter; (b) Respondents' right to appear and present evidence in this matter; (c) Respondents' right to appeal this Order; and (d) all other procedural rights granted to Respondents by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2002) ("Texas Securities Act"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon Supp. 2002) ("Administrative Procedure Act").

2. Respondent Wunderlich is registered with the Securities Commissioner as a general securities dealer and investment adviser. Gary Kent Wunderlich is CEO of Respondent Wunderlich and is registered as its designated officer.
3. Respondent Wunderlich operated a branch office located at 2800 Post Oak Boulevard, Suite 5858, Houston, Texas, which was registered as a branch office with the Securities Commissioner as required by Section 115.1(b)(1)(B) of the Rules and Regulations of the Texas State Securities Board ("Board Rules"). Respondent Suttle was the registered agent in this office and was responsible for supervision of the agents in this office.
4. The Staff of the Texas State Securities Board conducted an inspection of this branch location in March, 2001.
5. Respondent Wunderlich, through Respondent Suttle, failed to maintain a centralized file of all incoming and outgoing correspondences as required by Section 115.5(e)(3)(C) of the Board Rules.
6. Respondent Wunderlich, through Respondent Suttle, failed to require agents to complete all the information on some of the customers' new account form as required by the firm's internal compliance procedures. The foregoing constitutes a violation of NASD Code Conduct Rule 3010(b)(1) and Section 115.10(b)(1) of the Board Rules.
7. Respondent Wunderlich, through Respondent Suttle, failed to maintain a securities received blotter and a customer account review log, as required by the firm's internal compliance procedures. The foregoing constitutes a violation of NASD Code Conduct Rule 3010(b)(1) and Section 115.10(b)(1) of the Board Rules.
8. The branch office maintains a local bank account for Respondent Wunderlich on which Respondent Suttle has signatory authority. This account is used to pay the expenses of the branch office. Respondent Wunderlich's internal compliance procedures prohibit the branch from accepting any checks from customers which are not made payable to the firm's clearing firm. The branch maintains an account at the same financial institution in the name of its clearing firm where customer checks are deposited on a daily basis. On several occasions over the course of several months, the branch office accepted checks from customers made payable to Respondent Wunderlich. During the period March 1, 2001, through March 5, 2001, the branch office accepted checks from customers which were inadvertently deposited into the branch office bank account instead of the clearing firm bank account, due to an error by the bank on the deposit slips. Upon discovery of this error on March 6, 2001, Respondent Suttle directed that such funds be transferred from the Wunderlich bank account to the clearing firm bank account. Accepting checks made out to the dealer in violation of the firm's internal compliance procedures is a violation of NASD Code Conduct Rule 3010(b)(1) and Section

115.10(b)(1) of the Board Rules. Exercising control over the funds of customers constitutes an inequitable practice in the sale of securities in violation of Section 14.A(3) of the Texas Securities Act.

9. In some instances, Respondent Suttle failed to document his review of incoming and outgoing correspondence as required by the firm's internal compliance procedures, NASD Code Conduct Rule 3010(d)(1), and Section 115.10(d) of the Board Rules.
10. Respondent Wunderlich, through Respondent Suttle, allowed an employee without an original NASD-approved fingerprint card to handle customer funds in violation of NASD Code Conduct Rule 1013(a)(2)(C) and Section 17(f)(2) of the Securities Exchange Act of 1934.
11. Respondent Wunderlich failed to establish and implement procedures for the review and approval of electronic mail, and failed to implement the procedures set forth in its compliance procedures for the review and approval in writing of all transaction records and communications with customers, in violation of NASD Code Conduct Rules 3010(d)(1) & (2) and Section 115.10(d) of the Board Rules.
12. At the time of the inspection of the branch office, Clause Miller ("Miller") (CRD # 4019734) was an agent located at this office who was supervised by Respondent Suttle. Prior to becoming employed at Respondent Wunderlich, Miller was the subject of a customer complaint relating to options trading which was settled for \$425,000. The complaint and settlement are properly disclosed on Miller's Form U-4 filed with the Securities Commissioner via the Central Registration Depository System.
13. While employed by Respondent Wunderlich, Miller opened option trading accounts for two customers. The trading strategy employed in both accounts was identical. Both customers' accounts are retirement accounts whose holdings represent one hundred (100%) percent of the customers' securities holdings. Miller exercised discretion in both accounts without written authorization from the customers. The trading in both accounts appeared unsuitable based on the customers' ages, income and experience. The foregoing constitutes an inequitable practice in the sale of securities in violation of Section 14.A(3) of the Texas Securities Act.
14. The internal compliance procedures for Respondent Wunderlich require special supervisory procedures be established for any agent who has a prior disciplinary problem. As noted in paragraph 12, Miller had a prior complaint and settlement regarding his activity in options trading, but Respondent Wunderlich, through Respondent Suttle, failed to establish any special supervisory procedures. In addition, Respondent Suttle failed to generate a review log of customer accounts as required by the firm's internal compliance procedures which would have detected

the problems in Miller's trading activity. The foregoing constitutes a violation of NASD Code Conduct Rule 3010(d)(1) and Section 115.10(d) of the Board Rules.

15. During the course of the inspection of the branch, the Staff questioned Respondent Suttle on the trading activity for Miller's customers. Respondent Suttle acknowledged that the firm had discussed Miller's overall trading strategy, but had not implemented any procedures to monitor it. Shortly after the inspection, Respondent Wunderlich through Respondent Suttle terminated Miller.
16. Respondent Wunderlich failed to establish and maintain a supervisory system to supervise the activities of its agents that was reasonably designed to comply with the provisions of the Texas Securities Act. The foregoing constitutes a violation of NASD Code Conduct Rule 3010(b)(1) and Section 115.10(b)(1) of the Board Rules.
17. Wunderlich Capital Management, LLC ("Wunderlich Capital") is an affiliate of Respondent Wunderlich that acts as an investment adviser. Respondent Wunderlich acted as a solicitor for Wunderlich Capital at a time when Wunderlich Capital was not registered or exempt from registration in Texas, and at a time when Respondent Wunderlich was not registered to conduct such advisory activity, in violation of Section 116.1(b)(1)(A) of the Board Rules. The foregoing constitutes a violation of Section 12.A(6) of the Texas Securities Act.
18. Respondents Wunderlich and Suttle have cooperated with the investigation of the Staff of the Securities Commissioner ("Staff") and have voluntarily implemented corrective actions in several areas addressed in the above-findings.
19. Respondent Wunderlich has reimbursed the two customers noted in paragraph 13, for the losses in the customers' trading accounts.

CONCLUSIONS OF LAW

1. Pursuant to Sections 14.A(3) and 14.A(6) of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order reprimanding a dealer and an agent.
2. Pursuant to Section 23-1 of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order assessing an administrative fine against a dealer and agent.

UNDERTAKING

1. Respondent Wunderlich hereby agrees to engage an independent compliance consultant to review its branch procedures and supervision in Texas. Respondent Wunderlich will require the consultant to prepare a report which will address all the violations set forth in this Order and any other deficiencies discovered by such

review. Such report will set forth what procedures have been implemented or will be implemented to address the prior violations and deficiencies. Such report will be filed with the Director of Inspections and Compliance for the Texas State Securities Board within 90 days of the date this Order is signed by the Securities Commissioner.

2. Respondent Suttle hereby agrees not to act in a supervisory capacity for six (6) months from the date this order is signed by the Securities Commissioner or until he has requalified by successfully completing the Series 24 examination.
3. Respondent Wunderlich hereby agrees that it will post its certificate of authority in all of its Texas branch office locations as required by Section 21 of the Texas Securities Act.

ORDER

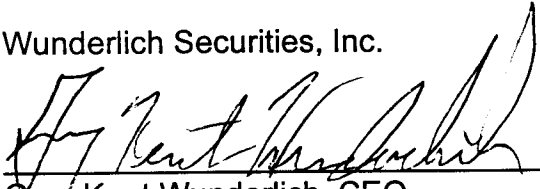
1. It is therefore ORDERED that Respondent Wunderlich and Respondent Suttle are hereby REPRIMANDED.
2. It is further ORDERED that Respondent Suttle is ASSESSED AN ADMINISTRATIVE FINE in the amount of Five Thousand Dollars (\$5,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Five Thousand Dollars (\$ 5,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
3. It is further ORDERED that Respondent Wunderlich and Respondent Suttle COMPLY with the terms of the Undertaking contained in this Order.

SIGNED AND ENTERED THIS 11th day of September, 2002.

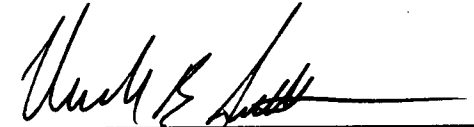

DENISE VOIGT CRAWFORD
Securities Commissioner

Respondents:

Wunderlich Securities, Inc.

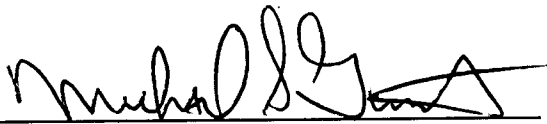


Gary Kent Wunderlich, CEO

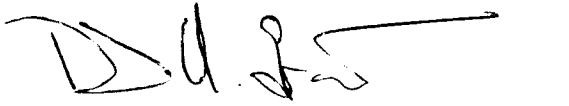


Michael Barrett Suttle, Individually

Approved as to Form:



Michael S. Gunst
Director
Inspections and Compliance Division



David A. Grauer
Director
Enforcement Division

ACKNOWLEDGMENT

On the 30th day of August, 2002, Wunderlich Securities, Inc. ("Respondent Wunderlich"), by and through Gary Kent Wunderlich, its CEO, personally appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. Gary Kent Wunderlich is duly authorized to enter into the foregoing Order and Undertaking on behalf of Respondent Wunderlich;
2. Gary Kent Wunderlich has read the foregoing Order and Undertaking;
3. Respondent Wunderlich has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Wunderlich knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent Wunderlich, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

Mary E. Martin
Notary Public in and for
the State of Tennessee

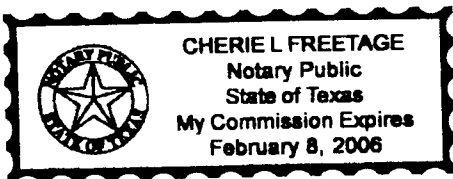
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My commission expires on: 2/20/03

ACKNOWLEDGMENT

On the 12 day of September, 2002, Michael Barrett Suttle ("Respondent Suttle") personally appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. Respondent Suttle has read the foregoing Order and Undertaking;
2. Respondent Suttle has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent Suttle knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and,
4. Respondent Suttle, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]

Cherie L. Freetage
Notary Public in and for
the State of Texas

My commission expires on: February 8, 2006