



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:

CONTINENTAL BROKER-DEALER CORP)
(CRD# 14048) and)
DOMINICK BIANCO (CRD# 2723092))
Respondents.)

Case No. AP-04-02

Serve both at: One Old Country Road
Carle Place, New York 11514

**FINDING OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER
TO CEASE AND DESIST, CENSURE, BAR
AND TO PAY CIVIL PENALTIES**

The Commissioner, having reviewed and considered the pleadings and record on file in the above-styled proceeding, having heard the evidence presented by the Enforcement Section on the question of civil penalties, now finds and concludes that the Enforcement Section has prevailed on the claims in its petition and further makes findings of fact and conclusions of law and enters a final order as follows:

PROCEDURAL BACKGROUND

1. Mary S. Hosmer, Assistant Commissioner for Enforcement, ("Enforcement Section") submitted on December 31, 2003, a petition requesting a cease and desist order, civil penalties and other relief.
2. On January 16, 2004, after reviewing the petition, the Commissioner issued a summary order.
3. Respondents received notice of their opportunity for hearing, being served with a copy of the summary order by certified mail on January 20, 2004. Despite an entry of appearance by counsel and two extensions of time in which to file, Respondents have not filed a request for hearing.

FINDINGS OF FACT

1. Respondent, Continental Broker-Dealer Corp. (CRD #14048) ("Continental"), is a New York corporation with a principal address of One Old Country Road, Carle Place, New York 11514.
2. Continental became registered in Missouri as a broker-dealer on April 30, 1996. It withdrew from registration on February 9, 2004.
3. Dominick M. Bianco (CRD #2723092) ("Bianco") has been employed by Continental since January 29, 1998.
4. Bianco is a New York resident with an address of 75 Prospect Street, South Amityville, New York 11701. Bianco was NASD licensed through Continental as a registered representative on January 27, 1998. Bianco became registered with the State of Missouri on April 29, 1998. His registration was terminated on December 31, 2003, when he failed to renew his registration.
5. Bianco was employed as the Director of Compliance of Continental until September 3, 2003.
6. Besides Bianco, Continental had ten agents registered in Missouri on December 31, 2003.
7. To register these agents in Missouri, Continental filed through Central Registration Depository ("CRD") a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") for each agent.
8. To terminate the employment of any agent, Continental filed through the CRD a Uniform Termination Notice For Securities Industry Registration ("Form U-5").
9. Question 14I of that Form U-4 asks:
 - (1) Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:
 - (a) is still pending, or; (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or; (c) was settled for an amount of \$10,000 or more?
 - (2) Have you ever been the subject of an *investment-related*, consumer-initiated complaint, not otherwise reported under question 14I(1) above, which alleged that you were *involved* in one or more *sales practice violations*, and which complaint was settled for an amount of \$10,000 or more?

10. Question 7E of the Form U-5 asks:

1. In connection with events that occurred while the individual was employed by or associated with your *firm*, was the individual named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that the individual was *involved* in one or more *sales practice violations* and which:

(a) is still pending, or;

(b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or;

(c) was settled for an amount of \$10,000 or more.

2. In connection with events that occurred while the individual was employed by or associated with your *firm*, was the individual the subject of an *investment-related*, consumer-initiated complaint, not otherwise reported under question 7(E)(1) above, which alleged that the individual was *involved* in one or more *sales practice violations*, and which complaint was settled for an amount of \$10,000 or more?

3. In connection with events that occurred while the individual was employed or associated with your *firm*, was the individual the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under questions 7(E)(1) or 7(E)(2) above, which:

(a) would be reportable under question 14I(3)(a) on Form U4, if the individual were still employed by your *firm*, but which has not previously been reported on the individual's Form U4 by your *firm*; or

(b) would be reportable under question 14I(3)(b) on Form U4, if the individual were still employed by your *firm*, but which has not previously been reported on the individual's Form U4 by your *firm*.

11. Sales practice violations are defined in the Form U-4 and Form U-5 as:

...any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any *self-regulatory organization*; any provision of the Securities and Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice.

12. On September 19, 2001, the Missouri Securities Division received a complaint from a Missouri resident concerning Continental and agent Joon Rhee. The complaint alleged Continental and its representatives sold stock to the Missouri resident, churned the investor's account and made unauthorized and unsuitable transactions in the investor's account that resulted in losses exceeding \$90,000.

13. On October 19, 2001, Continental entered into a settlement agreement with the Missouri resident and agreed to pay the Missouri resident \$35,000.
14. As of December 10, 2003, neither the Missouri resident's complaint, nor the settlement of this complaint was reported on the CRD record of agent Joon Rhee (CRD# 2167218).
15. On December 31, 2001, Continental provided to the Missouri Securities Division copies of customer complaints that had been received by Continental from January 1, 2001 to December 27, 2001.
16. Continental had redacted from these copies the names, addresses and telephone numbers of the complainants and their law firms. These complaints did not appear to involve Missouri residents.
17. Over twenty-five of the seventy-eight customer complaints that alleged sales practice violations and claimed losses of more than \$10,000, were not reported on the agent's Uniform Application for Securities Industry Registration or Transfer ("Form U-4") submitted to the Central Registration Depository ("CRD").
18. On May 2, 2002, the Missouri Securities Division requested copies of all client complaints received by Continental during the period January 1, 2002 to May 2, 2002. As of January 16, 2004, Continental had not supplied copies of these customer complaints.
19. On December 20, 2002, the Missouri Securities Division requested copies of all settlement agreements made with clients during the period January 1, 1998 to December 20, 2002. As of December 31, 2003 the Division had received copies of only two settlement agreements from Continental.
20. On June 13, 2003, the Missouri Securities Division requested detailed information from the firm concerning all disciplinary actions taken by the firm against any registered representative.
21. On August 5, 2003, Continental provided the Missouri Securities Division a copy of a settlement agreement between Continental and claimant, George Steelhammer, an investor from the State of Washington. On or about May 21, 2001, Mr. Steelhammer in connection with his purchase and sale of stock, initiated arbitration proceedings against Continental, Dominick M. Bianco and others alleging, among other things, churning, unauthorized trading, fraud, failure to supervise and claiming damages in excess of \$500,000. On or about November 2001, Continental entered into a settlement agreement with Mr. Steelhammer and agreed to pay him in excess of \$165,000 to settle this claim.
22. As of December 10, 2003, Respondents had not disclosed this complaint or the settlement of this complaint and failed to update the Form U-4 for Dominick Bianco or the Form U-5 for the sales agent, Sean Miller CRD #2465364.

23. On November 20, 2003, the Missouri Securities Division issued a subpoena ("November 20 Subpoena") to Continental requesting Continental's complaint log, including the current status of the complaints, and all records pertaining to any disciplinary actions the firm had taken against any agent from January 1, 2001 to the date of the subpoena.
24. On November 21, 2003, Continental provided a complaint log that contained cursory information about the actions taken by the firm. This log listed as the resolution of some of these complaints, "special supervision" but contained no details about why the agent was placed on special supervision, what this special supervision entailed, the date the supervision was to begin, the date the supervision was to end or the specific requirements of the supervisor who was to provide the special supervision.
25. As of January 16, 2004 Respondents had refused to provide information requested by the staff of the commissioner.
26. On September 3, 2003, the NASD filed an acceptance, waiver and consent with Dominick M. Bianco, alleging Bianco failed to adequately supervise the trading activity of individuals employed by Continental and failed to prevent registered representatives from effecting excessive and/or unsuitable option and equity transactions in heavily leveraged margin accounts. Bianco was ordered to pay a fine of \$30,000 and was barred from association with any NASD member as a principal or supervisor.
27. On September 17, 2003, the NASD initiated a regulatory action against Continental seeking disgorgement and restitution for allegations that Continental failed to enforce written supervisory procedures and failed to ensure that designated principals performed their delegated duties or otherwise reasonably supervised their registered representatives. The NASD alleged Continental customers sustained \$5 million in losses, while the firm and representatives received commissions in excess of \$5.3 million.
28. On November 5, 2003, the Securities Division received additional information regarding other customers of Continental that had filed arbitration complaints with the NASD. The Division found additional complaints that named Bianco, claimed damages over \$10,000, alleged sales practice violations and failure to supervise. As of December 10, 2003 these complaints were not reported on Bianco's Form U-4.
29. The Division received information that there were additional settlements of customer complaints and/or arbitrations during the period January 1, 2001 to November 20, 2003 that should have been provided to the Division pursuant to its request.
30. The Division received information that there were additional settlements of customer complaints and /or arbitrations during the period January 1, 2001 to November 20, 2003, that should have been disclosed on the representative's and /or officers' or directors' Form U-4s or Form U-5s.

31. In the Form U-4s and Form U-5s, agents of Continental and Respondents failed to file correcting amendments, thereby omitting the following information, which made statements made in the CRD System false and misleading:
 - a. Continental had unreported complaints against its representatives alleging fraud unauthorized trading, misrepresentation and/or fraud;
 - b. Continental had received unreported complaints alleging that Continental and/or one or more of its officers had failed to supervise these representatives;
 - c. Customer arbitration complaints that were filed against an officer of Continental and/or a representative;
 - d. Settlement agreements with some of these customers, some of which required the customers to dismiss the arbitration;

33. This Order is in the public interest.

CONCLUSIONS OF LAW

I. Missouri Uniform Securities Act

1. §409.202(a) of the Missouri Uniform Securities Act, RSMo 2000, (hereafter “ 1956 Act”) provided:

A broker-dealer, agent may obtain an initial or renewal registration by filing with the commissioner or his designee an application, together with a consent to service of process pursuant to section 409.415(g) and paying the fee herein prescribed. The application shall contain whatever information the commissioner by rule requires concerning such matters as: ...

2. The commissioner promulgated rules governing the registration of agents in 15 CSR 30-51.020(2). An application for agent registration requires the filing of a Form U-4, and further requires that NASD members must submit these applications in accordance with the guidelines of the CRD System. Although the duty of filing the application, including the Form U-4, lies with the individual agents, Respondents took on the responsibility of filing the agent applications and actively participated in these filings.

3. §409.203(d), RSMo 2000 provided:

If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant ...shall file a correcting amendment promptly if the document is filed with respect to a registrant....”

Although the duty of filing the correcting amendments, including amendments to the Form U-4, primarily lies with the individual agents, as part of their reasonable supervision of Continental's agents, Respondents took on the responsibility and actively participated in these filings.

4. In order to assess the qualification of agents and broker-dealers on a continuous basis the commissioner has promulgated rules further specifying this requirement and requiring the submission of information to the commissioner through the CRD System at certain intervals. 15 CSR 30-51.160(3) provides:

Continuing Duty of Applicants and Registrants to Disclose Material Information.

- (A) Amendments to Applications for Material Change.
During the pendency of any application, or effectiveness of any registration, every broker-dealer, agent, investment adviser, or investment adviser representative shall immediately report to the commissioner in writing any material change in any information, answers, responses, exhibits, or schedules submitted or circumstances disclosed in its last prior application. A correcting amendment shall be filed with the division at the time of occurrence or discovery of these changes, and not later than thirty (30) days following the specified event or occurrence. If the application was submitted through the CRD System or IARD System, any amendment shall be submitted in accordance with the guidelines of the CRD or IARD System.
- (B) Termination of an Agent or Investment Adviser Representative.
 1. Duty of broker-dealer When an agent's ...association with the broker-dealer ...is discontinued or terminated by either party, the broker-dealermust file within thirty (30) days of the discontinuance or termination, a notice of that fact, stating the date of and reasons for the discontinuance or termination (Form U-5 or by letter).

In addition to subsection (A) giving more specificity to the duty of registrants to promptly file correcting amendments to applications, subsection (B) places a specific duty on Respondent Continental to submit the U-5 information. Respondents submitted incomplete, and therefore, false and misleading responses to the requests in the U-5.

5. §409.404, RSMo 2000 provided that:

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement, which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Respondents made and caused to be made, in response to questions on Form U-4s and Form U-5s, statements, which were false and misleading.

6. §409.408(b), RSMo 2000, provided, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

7. Failures to file correcting amendments to the Form U-4 in the above findings of fact violated §§409.203(d) and 409.404, RSMo 2000 and 15 CSR 30-51.160(3), and constituted illegal practices by Continental's agents under §409.408(b), RSMo 2000. Respondents Continental and Bianco, both directly and in their supervisory capacities, participated in these illegal practices.
8. Failures to file complete and truthful responses to questions in the Form U-5 in the above findings of fact violated §409.404, RSMo 2000. Respondents Continental and Bianco, both directly and in their supervisory capacities, participated in these illegal practices.
9. Failing to produce all material and information responsive to a subpoena of the commissioner issued pursuant to §409.407(b), RSMo 2000 constituted an illegal practice under 409.408(b), RSMo 2000. Respondents Continental and Bianco, both directly and in their supervisory capacities, participated in this illegal practice.
10. The Missouri Commissioner of Securities is empowered under §409.408(b), RSMo 2000 to issue such orders as he may deem just.

II. Missouri Securities Act of 2003

11. §409.4-406(b), RSMo Cumulative Supp. 2003 of the Missouri Securities Act of 2003 (hereafter "2003 Act") provides:

If the information or record contained in an application document filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

As described in the above findings of fact, agents with Continental failed to promptly file correcting amendments in violation of this section. In assuming responsibility for filing correcting amendments as part of their supervision of Continental's agents, Respondents, in failing to promptly file correcting amendments, materially aided in these violations and failures to comply.

12. 15 CSR 30-51.160(3)(A) was not changed by emergency amendments filed in conjunction with the effectiveness of the 2003 Act:

Continuing Duty of Applicants and Registrants to Disclose Material Information.

(A) Amendments to Applications for Material Change.

During the pendency of any application, or effectiveness of any registration, every broker-dealer, agent, investment adviser, or investment adviser representative shall immediately report to the commissioner in writing any material change in any information, answers, responses, exhibits, or schedules submitted or circumstances disclosed in its last prior application. A correcting amendment shall be filed with the division at the time of occurrence or discovery of these changes, and not later than thirty (30) days following the specified event or occurrence. If the application was submitted through the CRD System or IARD System, any amendment shall be submitted in accordance with the guidelines of the CRD or IARD System.

As described in the above findings of fact, agents with Continental failed to file correcting amendments no later than thirty days following the specified events and occurrences in violation of this rule. In assuming responsibility for filing correcting amendments as part of their supervision of Continental's agents, Respondents, in failing to promptly file correcting amendments, materially aided in these violations and failures to comply.

13. §409.5-505, RSMo Cumulative Supp.2003 provides:

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

As described in the above findings of fact and in violation of this section, Respondents caused statements to be made, or materially aided agents of Continental in omitting material facts from their CRD record by failing to file correcting amendments, which made statements made in the Form U-4 of the CRD record false and misleading.

14. §409.4-412, RSMo Cumulative Supp.2003 provides:

(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant. . . .

(c) If the commissioner finds that the order is in the public interest and subsection (d)(1) to (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this act may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars for a single violation or fifty thousand dollars for several violations on a registrant.....

(d) A person may be disciplined under subsections (a) to (c) if the person:

(1) Willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten years;...

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten years;...[or]

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.....

(f) The commissioner may restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding...

The November 20 Subpoena in the above findings of fact, as a lawful subpoena of the commissioner, constituted an order issued under the 2003 Act. As described in the above findings of fact, Respondents willfully violated and failed to comply with §409.404, RSMo 2000, §409.5-505, RSMo Cumulative Supp.2003 and the November 20 Subpoena, and failed to reasonably supervise by not taking reasonable steps to avoid violations of §409.4-406(b), RSMo Cumulative Supp. 2003 and 15 CSR 30-51.160(3)(B) by agents of Continental, subjecting Respondents to discipline by the commissioner under §409.4-412 , RSMo Cumulative Supp.2003.

15. §409.6-604(a), RSMo Cumulative Supp.2003 provides:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act;[or]
- (2) Issue an order under §409.2-204.

The November 20 Subpoena in the above findings of fact, as a lawful subpoena of the commissioner, constitutes an order issued under the 2003 Act. As described in the above findings of fact, Respondents have willfully violated and failed to comply with §409.5-505, RSMo Cumulative Supp. 2003 and the November 20 Subpoena, and have materially aided agents of Continental in violating §409.4-406(b), RSMo Cumulative Supp.2003 and 15 CSR 30-51.160(3)(B), subjecting them to action by the commissioner under §409.6-604, RSMo Cumulative Supp.2003.

16. §409.6-604(d), RSMo Cumulative Supp.2003 provides:

In a final order...the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents and their agents, employees and servants with knowledge of this order are prohibited from:

- A. Violating, or materially aiding others in the violation of §409.4-406(b), RSMo Cumulative Supp. by failing to promptly file correcting amendments to the applications for agents of Continental on file with the CRD System;
- B. Violating, or materially aiding others in the violation of 15 CSR 30-51.160(3)(B) by failing to file correcting amendments to Form U-4s for agents of Continental at the time of the occurrence, but no later than thirty days following the specified event or occurrence; and
- C. Violating, or materially aiding others in the violation of §409.5-505, RSMo Cumulative Supp. 2003 by causing to be made, in the CRD record, in connection with responses to questions in Form U-4s and Form U-5s, omissions of responsive information, including customer complaints and settlements with investors, which made the statements false and misleading.

IT IS FURTHER ORDERED that Respondent Continental Broker-Dealer Corp. (CRD # 14048) is permanently **BARRED** from registration as a broker-dealer in the State of Missouri.

IT IS FURTHER ORDERED that pursuant to §§409.4-412(c) and 409.6-604(d), RSMo Cumulative Supp. 2003, Respondent Continental Broker-Dealer Corp. (CRD # 14048) shall pay within ten days of this order the sum of forty thousand dollars (\$40,000) to the State of Missouri as civil penalties.

IT IS FURTHER ORDERED that pursuant to §409.6-604(e), RSMo Cumulative Supp. 2003, Respondent Continental Broker-Dealer Corp. (CRD # 14048) shall pay within ten days of this order the additional sum of ten thousand four hundred dollars (\$10,400) to the Secretary of State's Investor Education and Protection Fund as reimbursement for the costs of the investigation and administration of this matter.

IT IS FURTHER ORDERED that Respondent Dominick Bianco (CRD # 2723092) is permanently **BARRED** from employment or association with any broker-dealer or investment adviser registered in the State of Missouri.

IT IS FURTHER ORDERED that pursuant to §§409.4-412(c) and 409.6-604(d), RSMo Cumulative Supp. 2003, Respondent Dominick Bianco (CRD # 2723092) shall pay ten thousand dollars (\$10,000) to the State of Missouri as civil penalties.

IT IS FURTHER ORDERED that pursuant to §409.6-604(e), RSMo Cumulative Supp. 2003, Respondent Dominick Bianco (CRD # 2723092) shall pay within ten days of this order the additional sum of one thousand nine hundred and fifty dollars (\$1,950) to the Secretary of State's Investor Education and Protection Fund as reimbursement for the costs of the investigation and administration of this matter.

O ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 24th DAY OF June, 2004.



MATT BLUNT
SECRETARY OF STATE

DOUGLAS M. OMMEN
COMMISSIONER OF SECURITIES