

BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF DELAWARE

IN THE MATTER OF:

THOMAS M. ROYCROFT  
(CRD NO. 21814651),

Respondent.

CASE NO. 98-07-02

CONSENT ORDER

I. Preliminary Statement

For the purpose of resolving the above-referenced matter, the Division of Securities, Delaware Department of Justice ("the Division") and Respondent, Thomas M. Roycroft ("Roycroft"), with the Respondent neither admitting, nor denying the findings or conclusions set forth herein, do hereby consent to the entry of an Order making findings and imposing sanctions:

II. Findings

1. Respondent, Thomas M. Roycroft ("Roycroft") (CRD No. 2181465) is a broker-dealer agent who is not currently registered in Delaware, but was registered as a broker-dealer agent in Delaware from October 27, 1995 through June 15, 1999. During the relevant periods discussed below, Roycroft was employed by Cohig and Associates, Inc., ("Cohig") (which later became EBI Securities Corporation) which was registered as a broker-dealer in Delaware. Mr. Roycroft was employed at Cohig's offices in Newark, Delaware from April 1997 through the time that Mrs. \_\_\_\_\_ account was closed in January 1998. Mr. Roycroft resides at \_\_\_\_\_

2. Thomas Roycroft prepared and executed a new account form on November 1, 1995 for \_\_\_\_\_ to initiate her Cohig and Associates, Inc., account number \_\_\_\_\_. The new account form lists Mr. Roycroft as account executive for that account.

3. In April, 1997, Mr. Roycroft transferred to Cohig's Newark office located at 11 Presbury Square, Newark, Delaware and he serviced Mrs. \_\_\_\_\_ account from that office.

4. Mrs. \_\_\_\_\_ was born on or about November 2, 1915. At all relevant times, she was a widow and, prior to her husband's death, her husband was primarily responsible for the family investments. During the relevant time periods listed in this complaint, Mrs. \_\_\_\_\_ had not received specific training in investing, nor did she have significant experience in investing.

5. According to Mrs. \_\_\_\_\_ Federal income tax returns for 1996 and 1997, her "total income" from line 22 of her 1040 forms was \$9,953 and 11,962, respectively. Her sources of income were listed as Social Security payments, pension, annuities, dividends, and interest. Mrs. \_\_\_\_\_ showed capital losses for her investments on both her 1996 and 1997 tax returns.

6. In the aforementioned new account form dated November 1, 1995, Mrs. \_\_\_\_\_ estimated annual income was listed as "40 K" and her estimated net worth was listed as "250 K." The November 1, 1995 new account form lists "investment

objectives" and the form reflects a check mark in the box marked "Income (Interest or Dividends)". In the "suitability requirement" section of the form, the only box checked is "Preservation of Capital."

7. On August 29, 1997, Thomas Roycroft prepared and executed an "update" to Mrs. \_\_\_\_\_ account form for account number \_\_\_\_\_. This form noted certain changes to her account information, including a change in her "estimated annual income" which in the updated form reflects "75 K" and her "estimated net worth" which reflects a net worth of one million on the updated account form. On the August 29, 1997 form, the "Income (Interest or Dividends)" box in the "investment objectives" section has been checked and in the "suitability requirement" section of the form, the "Long Term Growth", "Growth with Risk", "Speculation-High Degree of Risk and/or High Activity" and "Purchase of Non-Rated Bonds," boxes have been checked. Mrs. \_\_\_\_\_ was not aware of, nor did she authorize, the changes in the updated account form.

8. From about December 1996 through January 1998, Thomas Roycroft engaged in frequent trading in Mrs. \_\_\_\_\_ account through use of a margin account using an apparent strategy pursuant to which he bought large positions of high risk securities including, but not limited to: Project Software and Development, Inc., Imclone Systems, Inc., C-Cube Micro Systems, Inc., Radisys Corporation, Borland International, Inc., Clarify, Inc., Metropolitan Health Networks, Inc., and National Auto Credit, Inc. These securities were generally held in Mrs. \_\_\_\_\_ account for short periods of time. Mr. Roycroft's trading pattern in Mrs. \_\_\_\_\_ account also shows

multiple purchases and sales of some of the same securities. These trades are set forth in Mrs. Cohig and Associates, Inc., account statements.

9. The trades discussed in the preceding paragraph generated excessive commissions for Thomas Roycroft.

10. Mrs. Cohig and Associates, Inc., statement for the period ending November 29, 1996 contains categories labeled "approximate value of priced securities" as \$77,531.64 and "equity" as \$79,622.89. Mrs. Cohig and Associates, Inc., portfolio summary for the period ending January 30, 1998, shows a "net closing balance" of "negative" \$75,783.41.

11. From about December 1996, and continuing through January 1998, , maintained a securities account at Cohig & Associates, Inc. ("Cohig") under account no. . From about December 1996 through January 1998, Respondent, Thomas Roycroft, exercised control over account and all securities transactions in that account.

12. From about December 1996 through January 1998, Mr. Roycroft willfully, with reckless disregard for the best interests of , and for the purpose of enriching himself at the expense of Mrs. , did execute trading in Mrs. account that was excessive in size or frequency in view of his client's investment objectives, level of sophistication in investments, and her financial situations and needs.

13. Mr. Roycroft's conduct as set forth in the three preceding paragraphs constituted a violation of 6 Del. C. § 7303, 7316 (a)(2), and 7316 (a)(7) and § 609 (c)(12) and (b)(2) of the Rules and Regulations Promulgated Pursuant to the Delaware Securities Act ("Rules").

14. Between December 1996 and January 1998, Thomas Roycroft purchased and sold securities for Mrs. \_\_\_\_\_ account which were not suitable for her in light of her investment objectives, level of sophistication in investments, or her financial needs.

15. Mr. Roycroft's conduct in recommending, purchasing and selling securities for Mrs. \_\_\_\_\_ without a reasonable basis for believing that they were suitable for his client constituted a violation of 6 Del. C. § 7316 (a)(2) and (a)(7) and Rule 609 (b)(3) and (c)(12).

16. During the relevant time period set forth above, Roycroft exercised discretion and control over her account from Cohig's Newark, Delaware office without written authorization to do so.

17. During the time period specified in paragraph 28, Mr. Roycroft executed transactions in Mrs. \_\_\_\_\_ securities accounts without her prior authorization.

18. Mr. Roycroft's conduct in the two preceding paragraphs constitutes a violation of 6 Del. C. § 7316 (a)(2) and (a)(7) and 609 (c)(12) and (b)(4) and (b)(5).

19. On or about August 26, 1997, Thomas Roycroft executed an updated account form for Mrs. \_\_\_\_\_ account in which he amended the annual income and net worth estimates from the previous account form dated on November 1, 1995. The changes to the account form made by Mr. Roycroft increased Mrs. \_\_\_\_\_ estimated annual income from forty thousand to seventy-five thousand dollars and increased her estimated net worth from two hundred and fifty thousand to one million dollars. The August 29, 1997 "updated" form also changed Mrs. \_\_\_\_\_ investment objectives from "Preservation of Capital" (11/1/95 form) to more risky objectives including "Speculation - High Degree of Risk and/or High Activity."

20. The new information concerning Mrs. \_\_\_\_\_ income and net worth in the updated account form was false, and was known by Mr. Roycroft to be false when he executed the August 26, 1997 updated form.

21. Mr. Roycroft had no basis in fact to believe that "Speculation-High Degree of Risk and or High Activity" and "purchase of non-rated bonds" were appropriate suitability objectives for Mrs. \_\_\_\_\_ in light of her investment objectives, level of sophistication in investments, or her financial situations and needs.

22. Mrs. \_\_\_\_\_ did not authorize the aforementioned changes on her account form.

23. This conduct as set forth in this count constitutes a violation of 6 Del. C. § 7303, § 7316 (a)(7) and § 7316 (a)(2), and Rule 609 (b)(26) and (c)(12).

**III. Agreement**

**In view of the foregoing:**

**24. Respondent neither admits, nor denies, the findings set forth in paragraphs one through twenty-three of this Agreement/Order and voluntarily consents to the entry of this Consent Order and represents and avers that no employee or representative of the Division has made any promise, representation or threat to induce its execution, other than as are reflected in the terms of this Agreement/Order.**

**25. Respondent voluntarily waives his right to an administrative hearing and, thereby, any appeal of such hearing.**

**26. Respondent agrees to pay an administrative fine in the amount of Three Thousand Dollars (\$3,000) within 10 days of the date of execution of this Agreement and Order by the Commissioner. Such payment shall be made payable to the State of Delaware; and should be mailed or hand delivered to Delaware Division of Securities, Department of Justice, 5<sup>th</sup> Floor, 820 N. French Street, Wilmington, DE 19801.**

**27. Respondent agrees to cease and desist all violations of the Delaware Securities Act.**

**28. Respondent agrees to refrain from committing future violations of the Delaware Securities Act.**

29. Respondent agrees to make no statement, public or private, written or oral including, but not limited to his U-4 disclosure, which is inconsistent with the terms, findings, conclusions and agreements, set forth in this Order, except such statements which are necessary to defend litigation relating to the subject matter of this Agreement/Order.

30. Respondent understands and agrees that this Order is being executed solely for the purpose of resolving and settling this dispute out of the specific matters outlined in the above referenced paragraphs. This Order should have no effect on the Securities Division, or its agents' ability to take action with regard to any conduct of the Respondent which is unrelated to the above referenced instances, or any conduct of the Respondent subsequent to the filing of the Complaint.

31. Respondent agrees that the breach of any provision of this Agreement/Order should be deemed a material breach of the entire agreement.

#### IV. Order

In view of the foregoing; the Securities Commissioner has determined that it is in the public interest to accept the above settlement. Accordingly, it is hereby ORDERED that

1. Respondent shall cease and desist all violations of the Delaware Securities Act.



2. Respondent shall not commit future violations of the Delaware Securities Act.

3. Respondent will pay a fine in the amount of Three Thousand Dollars (\$3,000) to State of Delaware, Investor Protection Fund, in the manner set forth in paragraph 26 of this Agreement/Order.

4. Respondent acknowledges that he is not registered to sell securities in the State of Delaware and he will not apply for registration in the State of Delaware as a Broker Dealer Agent or Investment Advisor representative for 18 months from the date of this Order.

5. Respondent shall comply with all terms and conditions of this Agreement as set forth in this document.

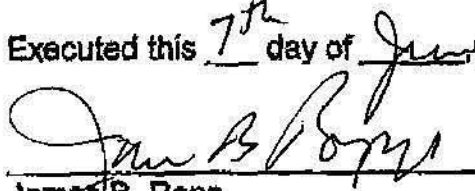
Executed this 24 day of May 2004

  
Thomas Roycroft

Executed this 27 day of May 2004

  
Mark J. Ross, Esq., Attorney for Respondent

Executed this 7<sup>th</sup> day of June 2004

  
James B. Ropp  
Securities Commissioner  
State of Delaware