

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DARREN JAMES POWELL
(CRD No. 2666058),

Respondent.

Disciplinary Proceeding
No. 2005002154901

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

November 2, 2007

Respondent is barred from associating with any FINRA member firm in any capacity for failing to appear and provide testimony at an on-the-record interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and for unauthorized trading, in violation of NASD Conduct Rule 2110.

Appearances

George C. McGuigan, Jr., Regional Counsel, Dallas, TX (Mark P. Dauer, Regional Counsel, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for Darren James Powell.

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”)¹ initiated this disciplinary proceeding following its investigation of alleged unauthorized activity in customer accounts at The Street, Inc. (“The Street”). The Complaint alleges that Respondent Darren James Powell (“Powell” or the “Respondent”) opened three

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority. References in this decision to FINRA shall include, by reference and where appropriate, references to NASD.

securities accounts at The Street without the customers' knowledge or authorization and then effected unauthorized trades in each of the accounts, in violation of NASD Conduct Rule 2110. The Complaint further alleges that Powell failed to comply with FINRA staff's written requests that he appear and provide on-the-record testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.² A copy of the Complaint is attached to this Decision as Exhibit A.

II. JURISDICTION

Powell entered the securities industry in 1987 in a non-registered capacity. In November 2000 he registered as a General Securities Representative through Empire Financial Group, Inc. ("Empire Financial"). He left Empire Financial in September 2001 and thereafter was registered for brief periods at several other firms before joining The Street in October 2004. Powell was registered as a General Securities Representative through The Street from October 14, 2004, until February 1, 2005. Powell then joined Globalvest Group, Inc. ("Globalvest") at which he was registered as a General Securities Representative from February 24, 2005, until July 14, 2005. Powell has not been registered with FINRA or associated with a FINRA member firm since he left Globalvest on July 14, 2005.³

Although Powell is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of the FINRA By-Laws, because: (1) the Complaint was filed on July 2, 2007, within two years following the termination of his registration with FINRA; and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available on FINRA's Internet site at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

³ Declaration Supporting Mot. for Entry of Default Decision ("McGuigan Decl.") ¶¶ 6-8; Ex. CX-1.

III. RESPONDENT'S DEFAULT

On September 21, 2007, Enforcement filed a Motion for Entry of Default Decision, together with a Declaration Supporting Motion for Entry of Default Decision and three attached exhibits. The Declaration and exhibits show that Enforcement properly served Powell with copies of the Complaint in accordance with Procedural Rule 9134(b)(1). Enforcement served the Respondent with the First Notice of Complaint on July 2, 2007, by first-class certified mail addressed to Powell's most current residential address shown in the Central Registration Depository (the "CRD Address") and to an alternative address FINRA staff obtained through an electronic database search during the investigation.⁴ Powell did not respond to the First Notice of Complaint. Enforcement then served Powell with a Second Notice of Complaint on August 2, 2007. Enforcement sent copies of the Second Notice of Complaint to Powell at the same two addresses by first-class certified mail.⁵ Powell received the Second Notice of Complaint on August 7, 2007, as evidenced by Powell's signature on the postal receipt for the certified mailing sent to his alternative address.⁶ Nonetheless, Powell did not respond to the Second Notice of Complaint.

The Hearing Officer finds that Powell received actual notice of this proceeding and that he defaulted by failing to file an Answer or otherwise respond to the Complaint. Accordingly, for the reasons discussed below, the Hearing Officer grants Enforcement's Motion for Entry of Default Decision.⁷

⁴ McGuigan Decl. ¶¶ 14-15.

⁵ *Id.* ¶¶ 16-17.

⁶ Ex. CX-3, at 15.

⁷ The factual findings in this Default Decision are based on the attached Complaint, the factual allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the Declaration and exhibits Enforcement filed with the Motion.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Unauthorized Accounts and Trades

The First Cause of Action alleges that on or about November 19, 2004, Powell opened a joint account at The Street for customers H.G. and N.G. without their authorization, knowledge, or consent. Powell then used the account to purchase 100 shares of Cheniere Energy stock at \$56.86 per share. Powell effected the purchase for his customers without their authorization, knowledge, or consent.

The First Cause of Action further alleges that on or about November 29, 2004, Powell opened an account for customer R.H. at The Street without the customer's authorization, knowledge, or consent. Powell then used the account to purchase 100 shares of Intermagnetics stock at \$28.44 per share. Powell effected the purchase for R.H. without his authorization, knowledge, or consent.

Finally, the First Cause of Action alleges that on or about December 13, 2004, Powell opened an account for customer D.M. at The Street without the customer's authorization, knowledge, or consent. Powell then used the account to purchase 500 shares of Intermagnetics stock at \$29.10 per share. Powell effected the purchase for D.M. without his authorization, knowledge, or consent.

The allegations of the First Cause of Action are sufficient to establish for the purposes of this proceeding that Powell violated NASD Conduct Rule 2110 by opening the foregoing three accounts and executing trades in those accounts without his customers' authorization.⁸

B. Failure to Appear and Testify

The Second Cause of Action alleges that between January 19, 2006, and May 31, 2007, pursuant to NASD Procedural Rule 8210, FINRA staff sent three written requests to the Respondent that he appear at FINRA's office in Dallas, Texas, and provide on-the-record

⁸ See *Department of Enforcement v. Sears*, No. C07050042, 2007 NASD Discip. LEXIS 26, at *9-10 (N.A.C. Sept. 24, 2007).

testimony concerning his unauthorized trading at The Street referenced in the First Cause of Action. The staff sent each letter to Powell at his CRD Address by certified and first-class mail. The staff also sent the third request to an alternative address it obtained from a search on LEXIS-NEXIS. Nevertheless, Powell did not respond to any of the requests.

The Hearing Officer finds these allegations sufficient to establish that Powell violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the staff's requests that he appear and provide on-the-record testimony in connection with the staff's investigation of his unauthorized trading at The Street.⁹

V. SANCTIONS

A. Unauthorized Accounts and Trades

For a violations of Conduct Rule 2110 based on unauthorized trades, the FINRA Sanction Guidelines ("Guidelines") begin by recommending a fine of \$5,000 to \$75,000. The Guidelines also recommend considering a suspension in any or all capacities for a period of ten business days to one year. In egregious cases, the Guidelines recommend a longer suspension of up to two years, or a bar. In addition, there are two specific considerations to determine sanctions in unauthorized transaction cases—whether the respondent misunderstood his authority or the terms of the customers' orders, and whether the unauthorized trading was egregious.¹⁰

FINRA has identified three categories of egregious unauthorized trading: (1) quantitatively egregious unauthorized trading (i.e., unauthorized trading that is egregious because of the sheer number of unauthorized trades executed); (2) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct; and (3) qualitatively egregious unauthorized trading, which is measured by the strength of the

⁹ See, e.g., *Department of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004).

¹⁰ FINRA Sanction Guidelines at 103 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

evidence and the respondent's motives in effecting the trades (i.e., whether the respondent acted in bad faith or as a result of a reasonable misunderstanding).¹¹

The evidence here demonstrates that Powell's conduct was qualitatively egregious. In each of three cases, Powell opened accounts in his customers' names without their knowledge and then on the same day effected unauthorized trades in the accounts. This pattern of conduct supports a finding that Powell acted in bad faith. Since the customers had not authorized the accounts, Powell lacked any basis to believe that he was authorized to make the trades on their behalf.

Based on the egregious nature of the unauthorized trading, the Hearing Officer concludes that the appropriate sanction is a bar.

B. Failure to Appear and Testify

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹² Here, Powell failed to respond in any manner to three written requests that he appear and answer the staff's questions about his unauthorized activities at The Street. There are no mitigating factors that would justify a lesser sanction than a bar. Accordingly, the Hearing Officer will bar Powell from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

VI. ORDER

Darren James Powell is barred from association with any member firm in any capacity for failing to respond to written requests that he appear and provide testimony in connection with FINRA's investigation into his unauthorized trades at a member firm, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and for unauthorized trading, in violation

¹¹ See *District Bus. Conduct Comm. v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *15-24 (N.A.C. June 15, 1999).

¹² Guidelines at 35.

of NASD Conduct Rule 2110. The bars shall become effective once this Default Decision becomes the final disciplinary action of FINRA.¹³



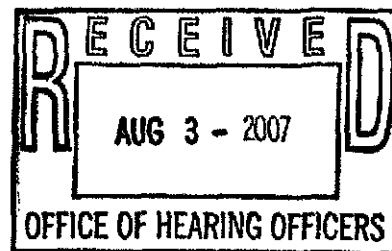
Andrew H. Perkins
Hearing Officer

Copies to:

Darren James Powell (by FedEx, overnight delivery, and first-class mail)
George C. McGuigan, Jr., Esq. (by first-class and electronic mail)
David R. Sonnenberg, Esq. (by first-class and electronic mail)
Mark P. Dauer, Esq. (by first-class and electronic mail)

¹³ The Hearing Officer has not ordered restitution because the evidence shows that the customers never paid for the trades, and hence they did not suffer any losses.

NASD
OFFICE OF HEARING OFFICERS



Department of Enforcement,

Complainant

v.

Disciplinary Proceeding
No. 2005002154901

Darren James Powell
General Securities Representative
CRD No. 2666058

Respondent

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Darren James Powell entered the securities industry in November 2000 as a General Securities Representative with an NASD member firm. From December 2002 to October 2004, he registered serially with four different NASD member firms. On October 14, 2004, he registered with NASD member firm The Street, Inc. as a General Securities Representative. On January 31, 2005, Powell voluntarily terminated his association with The Street, and thereafter he registered as a General Securities Representative with member firm Globalvest Group, Inc. On July 14, 2005, Powell voluntarily terminated his association with Globalvest Group, and his registration as a General Securities Representative was terminated on the same day. Since his termination from Globalvest, Powell has not been associated or registered with any NASD member firm.

2. Although Powell is not currently registered, he remains subject to the jurisdiction of NASD until July 13, 2007, pursuant to Article V, Section 4 of NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF ACTION
(Powell Opened Accounts Without
Authorization and Effected Unauthorized Transactions (Rule 2110))

3. The above referenced paragraphs 1 – 2 are incorporated herein by reference.
4. On or about November 19, 2004, Respondent Darren James Powell opened a joint account at member firm The Street, Inc. for customers H.G. and N. G. without the customers' authorization knowledge or consent.
5. Also on or about November 19, 2004, Powell purchased 100 shares of Cheniere Energy stock for the joint account of customers H.G. and N.G., at a price of \$56.86 per share, without the customers' authorization knowledge or consent..
6. On or about November 29, 2004, Powell opened an account for customer R. H. at The Street without the customer's authorization, knowledge or consent.
7. Also on or about November 29, 2004, Powell purchased 100 shares of Intermagnetics stock for customer R. H., at a price of \$28.44 per share, without the customer's authorization, knowledge or consent.
8. On or about December 13, 2004, Powell opened an account for customer D. M. at The Street without the customer's authorization, knowledge or consent.
9. Also on or about December 13, 2004, Powell purchased 500 shares of

Intermagnetics stock for customer D. M., at a price of \$29.10 per share, all without the customer's authorization, knowledge, or consent.

10. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Darren James Powell.

SECOND CAUSE OF ACTION

(Powell Failed to Appear for Testimony (Rules 2110 and 8210))

11. The Department realleges and incorporates by reference Paragraphs 1 through 7 above.
12. By letter dated January 19, 2006, NASD staff requested, pursuant to Procedural Rule 8210, that Powell appear in NASD's Dallas, Texas District office on February 15, 2006, and provide on-the-record testimony.
13. The January 19th letter was sent, via certified mail and regular mail, to Powell at his CRD home address.
14. Neither mailing of the January 19th letter has been returned to NASD's Dallas, Texas District office. Moreover, Powell never appeared as requested.
15. By letter dated February 8, 2006, NASD staff requested, again pursuant to Rule 8210, that Powell appear in NASD's Dallas, Texas District office on March 1, 2006, and provide on-the-record testimony.
16. The February 8th letter was sent, via certified mail and regular mail, to Powell at his CRD home address.
17. The certified mailing of the February 8th letter was returned to NASD's Dallas, Texas District office marked "unclaimed" and "unable to forward." The regular

mailing of the February 8th has never been returned.

18. Powell never appeared as requested.

19. By letter dated May 31, 2007, NASD staff sent a third request to Powell requesting, pursuant to Procedural Rule 8210, that he appear in NASD's Dallas, Texas District office on June 15, 2007, and provide on-the-record testimony.

20. The May 31st letter was sent, via certified mail and regular mail, to Powell at his CRD home address and to one other address NASD staff obtained through LexisNexis. To date, neither mailing has been returned.

21. Powell never appeared as requested.

22. Such acts, practices, and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Darren James Powell.

PRAYER

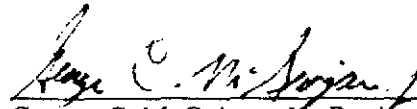
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed;
- B. order that the Respondent bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Formal Complaint
2005002154901/Darren James Powell

NASD DEPARTMENT OF ENFORCEMENT

Date: July 2, 2007


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