

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL ENGLESE, JR.
(CRD No. 3221850),

Respondent.

Disciplinary Proceeding
No. 2005002464701

Hearing Officer – AWH

DEFAULT DECISION

February 14, 2008

Formerly registered representative failed to comply with SEC penny stock disclosure rules, in violation of SEC Rules 15g-2, 15g-3, and 15g-5, and NASD Conduct Rule 2110, and failed to respond to FINRA Staff requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent barred from association with any member firm in any capacity for each violation.

Appearances:

Vaishali S. Shetty, Esq., for the Department of Enforcement.

No appearance by or for Michael Englese, Jr.

DECISION

Introduction

On August 13, 2007, the Department of Enforcement issued the Complaint in this proceeding, alleging that Michael Englese, Jr. (“Respondent” or “Englese”) (1) failed to comply with SEC penny stock rules, thereby violating those rules and NASD Conduct Rule 2110, and (2) failed to respond to FINRA requests for information, in violation of

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

NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to file an Answer to the Complaint, or to a Second Notice of Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on November 9, 2007, to which Englese did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this decision, will be treated as admitted.

Findings and Conclusions²

The Respondent

Englese was first registered with FINRA as a General Securities Representative in September 1999. From that time until June 2004, he was registered through four different firms before registering through GunnAllen Financial Inc. ("GunnAllen"). He was terminated from GunnAllen on June 2, 2005. GunnAllen filed an amended Form U5 on September 1, 2005, noting a customer complaint regarding suitability and possible misrepresentation. Englese is not currently associated with a FINRA member firm.

Service of the Complaint

On August 13, 2007, Enforcement served the Complaint on Englese by first class and certified mail sent to his last known CRD address and two other addresses Enforcement discovered as a result of an Equifax search. The first class mailing to the CRD address was not returned. The certified mail receipt was returned without a signature. Both mailings to the first Equifax address were returned, marked "Moved, Left No Address." The first class mailing to the second Equifax address was not returned. The certified mailing to that address was returned, marked "Unclaimed."

² All findings of fact are based on the admitted allegations in the Complaint, the Declaration in Support of Motion for Entry of Default, and the exhibits attached thereto.

On September 18, 2007, Enforcement served the Second Notice of Complaint and Complaint on Englese by first class and certified mail sent to his CRD address and the two Equifax addresses. The first class mailing to the CRD address was returned, marked "Moved, Left No Address." The receipt for the certified mailing to his CRD address was returned, marked "Not Deliverable as Addressed, Unable to Forward." The first class mailing to the first Equifax address was returned, marked "Moved, Left No Address." The receipt for the certified mailing to that address was returned, similarly marked. The first class mailing to the second Equifax address was not returned. The certified mailing to that address was returned, marked "Unclaimed."

Jurisdiction

Article V, Section 4 of the FINRA By-Laws provides for a two-year period of retained jurisdiction over an associated person after the effective date of the individual's termination of association. If an amendment to a notice of termination of association is filed within two years of the original notice that discloses that the person may have engaged in conduct actionable under any applicable statute, rule, or regulation, the amendment operates to recommence the running of the two-year period of retained jurisdiction. During this period of retained jurisdiction, FINRA may file a complaint based upon conduct that occurred while the individual was associated with a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Englese was associated with GunnAllen from June 1, 2004, through June 2, 2005. On September 1, 2005, GunnAllen filed an amended Form U5, disclosing a customer

complaint regarding suitability and misrepresentation. Enforcement issued its Complaint on August 13, 2007, within two years of the filing of the amended U5. The Complaint is based upon Englese's conduct while he was associated with GunnAllen, and his failures to respond to information requests occurred during the two-year period following the filing of the amended Form U5. Therefore, FINRA has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint and the first and second Notice of Complaint on Englese at his CRD address and the two Equifax addresses. Each mailing was sent by first class and certified mail. Pursuant to Procedural Rule 9134, those mailings establish that Englese had valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Penny Stock Rule Violations

Unless the transaction is not recommended by the broker or dealer, the Penny Stock Rules require brokers and dealers to provide their penny stock customers with information concerning the general risks of penny stocks and specific information on customer purchases of those stocks.³ Among other requirements, prior to effecting transactions in penny stocks, brokers and dealers must provide customers with (1) a risk disclosure document that describes the risks of investing in penny stocks,⁴ (2) oral and

³ A 'penny stock' is defined under Rule 3a51-1 of the Exchange Act as a non-NASDAQ or non-exchange listed security (i.e. OTCBB or pink sheet security) that is currently trading below five dollars per share and has been issued by a company with limited tangible assets, revenues, or continued operations.

⁴ SEC Rule 15c-2.

written disclosure of current bid and offer quotations, if any,⁵ and (3) disclosure of the compensation of the broker-dealer and its salesperson in the transaction.⁶

From January through March 2005, while he was registered through GunnAllen, Englese executed purchases of approximately 9,400 shares of a penny stock, AngelCiti Entertainment (AGCI), in three customer accounts. Englese failed to provide those customers with the required disclosure document, disclosure of the current bid and offer quotations, and disclosure of the compensation he and the firm were to receive for executing the transactions. Instead, for at least two of the three customers, Englese procured an Unsolicited Trade Letter (“UTL”) from them, purporting to show that the penny stock trades were not recommended to the customers by Englese. In one case, two days after the trade was executed, the customer signed and returned a blank UTL to Englese. However, all three customers independently and uniformly stated that they were contacted by Englese and made the purchases based on Englese’s recommendation.

Because Englese recommended the penny stock transactions, they were not exempt from the Penny Stock Rules. By failing to comply with those Rules before executing the transactions, Englese violated those Rules and, consequently, NASD Conduct Rule 2110.

Failure to Respond to Requests for Information

During the course of its investigation of Englese’s conduct regarding the sales of penny stocks, FINRA Staff sent Englese three requests for information pursuant to NASD Procedural Rule 8210. Englese failed to respond to any of those requests.

⁵ SEC Rule 15g-3.

⁶ SEC Rules 15g-4 and 5.

The first request for information was sent on November 1, 2005, to Englese by first class and certified mail to his current residential address as listed in the Central Registration Depository ("CRD Address). A copy was similarly sent to Englese at an address the Staff found through a search using the Equifax service ("Equifax Address). The first class mailing to the CRD Address was not returned, and the certified mailing to that address was returned, marked "Return to Sender" and "Deceased." The Staff was unable to determine if the notation "Deceased" referred to Respondent Englese, Jr. Subsequent mailings to the CRD Address were not so marked, and the Staff's investigation led it to conclude that the "Deceased" notation likely referred to Englese's father who passed away in 2003. The mailings to the Equifax Address were both returned, marked "Return to Sender, Unable to Forward."

The second request for information was sent on November 15, 2005, to Englese by first class and certified mail to both the CRD Address and the Equifax Address. The first class mailings were not returned. The certified mailings were returned, marked "Return to Sender, Unclaimed, Unable to Forward."

In April 2007, the Staff identified a third possible address for Englese as a result of an Equifax search ("Third Address"). On April 10, 2007, the Staff sent a third request for information to Englese by first class and certified mail to the CRD Address, the Equifax Address, and the Third Address. The first class and certified mailings to the CRD Address and the Equifax Address were returned, marked "Return to Sender" and "Unable to Forward." The first class mailing sent to the Third Address was not returned, and the certified mailing to that address was returned, marked "Return to Sender, Unclaimed, Unable to Forward."

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.⁷ When an individual fails to respond to information requests, FINRA's ability to perform its regulatory responsibilities is subverted.⁸ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."⁹

Pursuant to Procedural Rule 8210(d), the mailings sent to Englese at his CRD Address and the other addresses that became known to the Staff provided him with constructive notice of the Staff's requests for information. Englese's failures to respond to FINRA's requests for information violate Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Penny Stock Violations

For willful failure to comply with the Penny Stock Rule requirements, the FINRA Sanction Guidelines suggest a fine of the greater of \$100,000 or \$5,000 per violative

⁷ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁸ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁹ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

transaction, and consideration of a suspension in any or all capacities for up to two years. In egregious cases, a bar is recommended.¹⁰

Here, Englese's misconduct was both willful and egregious. He deliberately mislead both his customers and his firm, and he sought to evade the requirements of the Penny Stock Rules by procuring false Unsolicited Trade Letters from those customers when he knew that he had initiated contact with those customers and solicited their purchases. He deprived his customers of the protections at the heart of the Penny Stock Rules. Accordingly, Englese will be barred for failing to comply with SEC Rules 15g-2, 15g-3, and 15g-5, in violation of NASD Conduct Rule 2110.

Failure to Respond to NASD Requests for Information

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the FINRA Sanction Guidelines recommend a bar as the standard sanction.¹¹ There are no mitigating factors that would justify a lesser sanction. Accordingly, Englese will be barred from association with any FINRA member firm in any capacity for failing to respond to staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Order

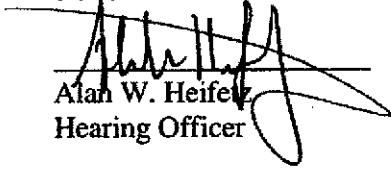
Michael Englese, Jr., is barred from association with any member firm in any capacity for (1) failing to comply with Penny Stock Rules, in violation of SEC Rules 15g-2, 15g-3, and 15g-5 and NASD Conduct Rule 2110; and (2) failing to respond to staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. The

¹⁰ FINRA SANCTION GUIDELINES, p. 94 (2007 ed.).

¹¹ *Id.*, p. 35.

bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:

Michael Englese, Jr. (*via first class mail & overnight courier*)
Vaishali S. Shetty, Esq. (*via first class mail & electronic mail*)
Mark P. Dauer, Esq. (*via first class mail & electronic mail*)
David R. Sonnenberg, Esq. (*via first class mail & electronic mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

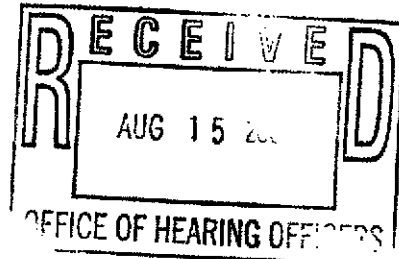
COMPLAINANT,

v.

**MICHAEL ENGLESE, JR.,
(CRD No. 3221850)**

RESPONDENT.

Disciplinary Proceeding
No. 2005002464701



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 2005 and March 2005, Respondent Michael Englese ("Englese" or "Respondent") executed purchases of AngelCiti Entertainment (AGCI), a penny stock, in at least three customer accounts. Englese recommended the AGCI purchases for each of the customers and was required to provide the customers with certain required penny stock disclosures pursuant to the penny stock rules promulgated under Section 15g of the Securities Exchange Act of 1934. Englese failed to provide the customers with (a) a risk disclosure statement pursuant to Section 15g-2 of the Exchange Act; (b) the inside bid and inside offer prices pursuant to Section 15g-3 of the Exchange Act; and, (c) information relating to compensation received by Englese in connection with the execution of the penny stock transactions, pursuant to Section 15g-5 of the

Exchange Act. It is alleged that such conduct constitutes violations of Section 15g and Rules 15g-2, 15g-3 and 15g-5 thereunder, and NASD Conduct Rule 2110.

2. NASD staff sent written requests for information to Englese, pursuant to NASD Procedural Rule 8210, during its investigation of the foregoing conduct. Englese failed to respond to these requests. It is alleged that this constitutes violations of NASD Procedural Rule 8210 and Conduct Rule 2110.

JURISDICTION

3. Englese first became registered with NASD, as a General Securities Representative ("GSR"), on approximately March 23, 1999.
4. Englese was registered with GunnAllen Financial, Inc. ("GunnAllen") from on or about June 1, 2004 through on or about June 2, 2005.
5. On June 2, 2005, GunnAllen filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Englese terminating Englese for "lack of production". On September 1, 2005, GunnAllen filed an amended Form U-5 noting a customer complaint filed by one of Englese's clients, LW, regarding alleged mishandling of his account.
6. Englese is not currently associated with a FINRA member firm. However, FINRA retains jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

**FIRST CAUSE OF ACTION
PENNY STOCK RULE DISCLOSURES
(VIOLATION OF EXCHANGE ACT RULES 15G-2, 15G-3 AND 15G-5
AND NASD CONDUCT RULE 2110)**

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. Between January 2005 and March 2005, Englese executed purchases of AGCI, a penny stock, in at least three customer accounts and failed to provide the customers with the required penny stock disclosures pursuant to the penny stock rules promulgated under Section 15g of the Exchange Act.
9. Customer RL opened an account with GunnAllen in October 2004.
10. On January 18, 2005, Englese purchased 5,000 shares of AGCI at a price of \$3.226 per share and 2,500 shares of AGCI at a price of \$3.266 per share for RL's account at GunnAllen for a total cost of \$24,315.00.
11. RL signed an Unsolicited Trade Letter (UTL) on January 15, 2005 which states that the AGCI purchase was unsolicited.
12. The purchase of AGCI stock in RL's GunnAllen account was actually solicited by Englese. RL purchased the shares of AGCI after being contacted by Englese who recommended the purchases to RL. RL purchased the shares in AGCI based on Englese's recommendation and advice to purchase the stock.
13. On April 12, 2005, RL transferred his account to another member firm. At that time, AGCI was trading at \$1.15 per share for a total value of \$8,625.00.
14. Customer RG opened an account with GunnAllen in January 2005.

15. On March 9, 2005, Englese purchased 2,000 shares of AGCI at a price of \$1.785 per share for RG's account at GunnAllen for a total cost of \$3,640.00.
16. RG purchased the shares of AGCI after being contacted by Englese who recommended the purchase to RG. RG purchased the shares in AGCI based on Englese's recommendation and advice to purchase the stock. There is no UTL signed by RG in connection with the AGCI transaction.
17. On April 12, 2005, RG transferred his account to another member firm. At that time, AGCI was trading at \$1.15 per share for a total value of \$2,300.00.
18. Customer GS opened an account with GunnAllen in October 2004.
19. On January 14, 2005, Englese purchased 2,400 shares of AGCI at a price of \$3.06 per share for GS's account at GunnAllen for a total purchase price of \$7,439.00.
20. GS signed a UTL on January 16, 2005 which states that the AGCI purchase was unsolicited. GS signed the UTL in blank after being asked to do so by Englese.
21. GS purchased the shares of AGCI after being contacted by Englese who recommended the purchase to GS. GS purchased the shares in AGCI based on Englese's recommendation and advice to purchase the stock.
22. On April 28, 2005, GS transferred his account to another member firm. At that time, AGCI was trading at \$.90 per share for a total value of \$2,160.00.
23. Prior to executing the AGCI trades in the accounts of RL, RG and GS, Englese did not provide them with: (a) a risk disclosure statement pursuant to Section 15g-2 of the Exchange Act; (b) the inside bid and inside offer prices pursuant to Section 15g-3 of the Exchange Act; and, (c) information relating to compensation

received by Englese in connection with the execution of the penny stock transactions, pursuant to Section 15g-5 of the Exchange Act.

By reason of the foregoing, Englese violated Section 15g and Rules 15g-2, 15g-3 and 15g-5 thereunder, and NASD Conduct Rule 2110.

**SECOND CAUSE OF ACTION
FAILURE TO RESPOND
(VIOLATION OF NASD PROCEDURAL RULE 8210 AND
NASD CONDUCT RULE 2110)**

24. The Department realleges and incorporates by reference paragraphs 1 through 23 above.
25. During the course of NASD's investigation of Englese's conduct regarding the customer trades, NASD staff sent a written request for information to Englese.

First Request

26. On or about November 1, 2005, NASD Staff forwarded to Englese a request for information pursuant to NASD Procedural Rule 8210 (the "First Request").
27. The request was sent by certified and regular first class mail to [REDACTED] [REDACTED] which is Englese's current residential address as reflected on the Central Registration Depository ("CRD Address").
28. NASD Staff conducted a search using the Equifax service through which they obtained an additional address, [REDACTED] [REDACTED] (the "Equifax Address"). The request for information sent to the Equifax Address also was sent via certified and regular first class mail.
29. The certified mailing to the CRD Address was returned, marked "Return to Sender." The envelope was also stamped "Deceased." Enforcement learned from public records that there was a Michael Englese that died at that location in

January 2003, prior to the conduct alleged. The age and timing of the death for the deceased Michael Englese did not correspond to the Respondent.

30. A response to the First Request was due on or before November 10, 2005. Englese failed to respond.

Second Request

31. On or about November 15, 2005, NASD Staff forwarded to Englese, a second request for information pursuant to NASD Procedural Rule 8210 (the "Second Request").
32. The request was sent by certified and regular first class mail to the CRD Address and the Equifax Address.
33. A response to the Second Request was due on or before November 25, 2005. Englese failed to respond.

Third Request

34. On or about April 10, 2007, NASD Staff forwarded to Englese, a third request for information pursuant to NASD Procedural Rule 8210 (the "Third Request").
35. NASD Staff identified a third address as part of the Equifax search, [REDACTED] ("117th Street Address").
36. The request was sent by certified and regular first class mail to the CRD Address, Equifax Address and 117th Street Address.
37. A response to the Third Request was due on or before April 19, 2007. Englese failed to respond.

By reason of the foregoing, Englese violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

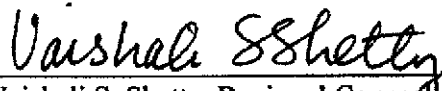
RELIEF REQUESTED

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 proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 13, 2007


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