

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MAURA E. MITCHELL
(CRD No. 4736301),

Respondent.

Disciplinary Proceeding
No. 2005003584601

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 3, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for effecting unauthorized transactions, in violation of NASD Conduct Rule 2110, and for providing false information and testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

Cynthia A. Kittle, Senior Regional Counsel, Los Angeles, CA (Mark P. Dauer, Regional Counsel, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for Maura E. Mitchell.

DECISION

I. INTRODUCTION

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") initiated this disciplinary proceeding after a customer complained that Respondent Maura E. Mitchell ("Mitchell" or the "Respondent") had executed an unauthorized transfer of funds between sub-accounts in her variable annuity. The Complaint contains two causes of action. The First Cause of Action alleges that in October 2005 Mitchell engaged in unauthorized transactions within the sub-accounts of variable annuity policies of 40 customers, in violation of NASD Conduct Rule 2110. The Second Cause of Action alleges that Mitchell

made false statements and supplied false documents to FINRA staff during the investigation of Mitchell's transactions in the sub-accounts of variable annuity policies while she was associated with Valic Financial Advisors, Inc. ("VFA").¹ The Second Cause of Action charges Mitchell with violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.² A copy of the Complaint is attached to this Decision as Exhibit A.

For the reasons discussed below, the Hearing Officer found that the Respondent defaulted by failing to answer the Complaint and that the appropriate sanction for each violation was a permanent bar from the securities industry.

II. JURISDICTION

Mitchell entered the securities industry in November 2003 when she joined VFA. Mitchell was registered as an Investment Company and Variable Contracts Products Representative with VFA from February 24, 2004, until December 19, 2005. VFA terminated her employment when it discovered that she had entered transactions without her customers' authorization.³ After leaving VFA, Mitchell was associated and registered with two other FINRA member firms. Her last registration terminated on October 29, 2007.⁴

The Hearing Officer finds that FINRA has jurisdiction because the misconduct alleged in the Complaint occurred while Mitchell was registered as an Investment Company and Variable Contracts Products Representative, and Enforcement filed the Complaint within two years following the termination of her latest FINRA registration.⁵

¹ VFA is currently known as AIG Retirement Advisors, Inc.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available on FINRA's Internet site at www.finra.org/Rules.

³ Ex. CX-1, at 11 (Form U5).

⁴ *Id.* at 6.

⁵ See Article V, Section 4 of the FINRA By-Laws.

III. RESPONDENT'S DEFAULT

On March 14, 2008, Enforcement filed a Motion for Entry of Default and Default Decision, together with a declaration and exhibits in support of the motion. The declaration and exhibits show that Enforcement properly served Mitchell with copies of the Complaint in accordance with Procedural Rule 9134(b)(1). Enforcement served the Respondent with the First Notice of Complaint on December 24, 2007, by first-class certified mail addressed to Mitchell's most current residential address shown in the Central Registration Depository (the "CRD Address").⁶ Although counsel for FINRA had spoken to Mitchell before she served the Complaint and confirmed that the CRD Address was Mitchell's current address, Mitchell did not answer the Complaint.⁷ Enforcement then served Mitchell with a Second Notice of Complaint on January 23, 2008. Enforcement sent copies of the Complaint and Second Notice of Complaint to Mitchell at her CRD Address by first-class certified mail.⁸ Mitchell did not respond to the Second Notice of Complaint.

The Hearing Officer finds that Mitchell received notice of this proceeding. Enforcement served the Complaint by certified mail addressed to Mitchell's current CRD Address, and the record contains signed receipts for each mailing. Accordingly, the Hearing Officer finds that Mitchell defaulted by failing to file an Answer or otherwise respond to the Complaint and grants Enforcement's Motion for Entry of Default Decision.⁹

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Unauthorized Transactions

The First Cause of Action alleges that between October 23 and 27, 2005, Mitchell accessed VFA's computer system and entered sales transactions of securities in variable annuity

⁶ Ex. CX-2.

⁷ Decl. ¶ 7.

⁸ Ex. CX-4.

⁹ 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 for Entry of Default and Default Decision.

sub-accounts for 40 customers identified in Exhibit A to the Complaint. The Complaint further alleges that all of the transactions were made without the customers' knowledge or consent. Mitchell applied the proceeds from the sales to purchase different securities in the customers' variable annuity sub-accounts.

The Hearing Officer finds that the allegations of the First Cause of Action are sufficient to establish for the purposes of this proceeding that Mitchell violated NASD Conduct Rule 2110 by executing unauthorized transactions.¹⁰

B. Providing False and Misleading Information to FINRA

The Second Cause of Action alleges that on February 13, 2006, FINRA issued a request for information to Mitchell pursuant to Procedural Rule 8210 in conjunction with FINRA's investigation of the unauthorized transactions set forth in the First Cause of Action ("First Request"). In the First Request, FINRA asked Mitchell whether she had engaged in unauthorized changes in customers' variable annuity policy sub-accounts. Attached to the First Request were two e-mails dated November 10, 2005, in which Mitchell admitted that she had entered transactions in customers' variable annuity sub-accounts without the customers' authorization. The first of the two e-mails was to her immediate supervisor. The second e-mail was to VFA's complaint coordinator. In each e-mail, Mitchell referenced the subject transactions and apologized for misunderstanding FINRA's rules governing the transactions.

Mitchell provided a written response to the First Request dated February 27, 2006, in which she stated

When I was asked by my boss ... whether I had made any changes to any VFA clients' sub-accounts, I confirmed I had.... I did so believing that written client authorization was not required ... the change was made over a two-to-three hour period one evening while I was isolated from my client and out of touch with my office after Hurricane Wilma. Due to my close relationship with my clients I believe that I at least had their implied consent to make changes.

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

On March 29, 2006, FINRA issued a second request for information to Mitchell ("Second Request"), which asked her to clarify her response to the First Request. Mitchell provided a written response to the Second Request on May 31, 2006, in which she stated that she had obtained express oral authority from each customer before entering the sub-account transactions. The Second Cause of Action alleges that this response was false because Mitchell had not obtained her customers' authorization for the subject transactions.

On August 7, 2006, FINRA issued a third request to Mitchell pursuant to Procedural Rule 8210 ("Third Request"). The Third Request required Mitchell to appear for an on-the-record interview.

Mitchell testified under oath at an on-the-record interview on September 7, 2006. During the on-the-record interview, Mitchell testified that she contacted all of her customers before she made the transactions in their variable annuity sub-accounts. The Second Cause of Action alleges that this testimony was false. In addition, the Second Cause of Action alleges that she produced two false hand-written documents during the on-the-record interview. She represented the first document to be a copy of contemporaneous notes of telephone conversations she had with her customers when she claimed she obtained their authorization to make the changes in the variable annuity sub-accounts. The second document she claimed was a "reallocation log" documenting the transactions. The Second Cause of Action alleges that these documents also were false, as she had not made the telephone calls they purportedly documented.

The Hearing Officer finds the allegations of the Second Cause of Complaint sufficient to establish that Mitchell violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by providing false information and testimony to FINRA in connection with the investigation of her unauthorized transactions at VFA.

V. SANCTIONS

A. Unauthorized Transactions

For a violations of Conduct Rule 2110 based on unauthorized transactions, 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 her authority, and whether the unauthorized trading was egregious.¹¹

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 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).¹²

The evidence here demonstrates that Mitchell’s conduct was both quantitatively and qualitatively egregious. Mitchell sold and then purchased sub-account securities in 40 customer accounts without authorization. Thus, she effected at least 80 unauthorized transactions. In addition, Mitchell repeatedly misrepresented the facts surrounding the transactions in an effort to avoid being held accountable for her misconduct. Such conduct evidences Mitchell’s lack of a good-faith belief that she had her customers’ authorization to effect the sub-account allocations.

¹¹ FINRA Sanction Guidelines at 103 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

¹² See *District Bus. Conduct Comm. v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *15-24 (N.A.C. June 15, 1999).

Based on the strength of the evidence, egregious nature of the unauthorized transactions, and the lack of mitigating factors the Hearing Officer concludes that the appropriate sanction for this violation is a permanent bar from the securities industry.

B. Providing False Information and Testimony to FINRA

The Guidelines recommend a bar where a respondent provides untruthful information to FINRA in response to a request for information issued pursuant to Procedural Rule 8210.¹³ Here, Mitchell repeatedly misrepresented her authority to enter the transactions that were the subject of FINRA's investigation, and there are no mitigating factors that would justify a lesser sanction than a bar. Accordingly, the Hearing Officer also will bar Mitchell for this violation.

VI. ORDER

Maura E. Mitchell is barred from association with any member firm in any capacity for effecting unauthorized transactions, in violation of NASD Conduct Rule 2110, and for providing false information and testimony to FINRA in connection with its investigation into those unauthorized transaction, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bars shall become effective once this Default Decision becomes the final disciplinary action of FINRA.


Andrew H. Perkins
Hearing Officer

Copies to:

Maura E. Mitchell (by FedEx, overnight delivery, and first-class mail)
Cynthia A. Kittle, 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 Guidelines at 35.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MAURA E. MITCHELL
(CRD No. 4736301),

Respondent.

**DISCIPLINARY PROCEEDING
No. 2005003584601**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In October 2005, without the customers' knowledge or consent, Respondent Maura E. Mitchell engaged in unauthorized transactions within the sub-accounts of variable annuity policies of 40 customers, as set forth in Exhibit A, attached hereto and incorporated herein. Upon investigation, Mitchell initially admitted to her firm that she had effected the transactions without the customers' authorization. During her on-the-record interview (OTR) and in written responses, pursuant to NASD Procedural Rule 8210, Mitchell subsequently made false statements to FINRA staff. She asserted that she had contacted the customers by telephone and obtained each of their authorizations to make sub-account changes in their variable annuities, with one exception (customer NP). As to that customer, Mitchell denied she caused any sub-

account change. As alleged below, the foregoing conduct constitutes separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. From November 26, 2003 through November 21, 2005, Respondent Maura E. Mitchell was associated with Valic Financial Advisors, Inc., a member of FINRA (f/k/a NASD (hereinafter FINRA)), as an Investment Company Products/Variable Contracts Representative. From April 12, 2006, through October 26, 2007, Mitchell was associated with another FINRA member firm in the same capacity. FINRA retains jurisdiction over Mitchell for the purposes of this Complaint.

FIRST CAUSE OF ACTION (NASD Conduct Rule 2110: Unauthorized Transactions)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.

4. On or about October 23, 2005 through October 27, 2005, without the customers' knowledge or consent, Mitchell accessed the firm's computer system and entered transactions that caused the sale of securities in variable annuity sub-accounts for the 40 customers identified in Exhibit A to this Complaint, and used the proceeds of the sales to purchase different sub-account investments within the customers' variable annuity policies.

5. Executing transactions without a customer's prior authorization and consent, as described in paragraph 4 above, constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade. Each such transaction constitutes a separate and distinct violation of NASD Conduct Rule 2110 by Respondent Mitchell.

SECOND CAUSE OF ACTION
(NASD Procedural Rule 8210 and NASD Conduct Rule 2110:
Providing FINRA with False and Misleading Information and Testimony)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.

7. On February 13, 2006, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210, FINRA issued to Mitchell a request for information (First Rule 8210 Request) in connection with FINRA's investigation of Mitchell's conduct alleged in Cause One, above. The First Rule 8210 Request requested a statement from Mitchell concerning, among other things, whether she had engaged in unauthorized sub-account allocation changes in customers' variable annuity policy sub-accounts. Attached as exhibits to the First Rule 8210 Request were two emails, both dated November 10, 2005, from Mitchell to Valic personnel investigating a customer complaint regarding sub-account transactions. In the emails, Mitchell admitted that she entered transactions in customers' variable annuity sub-accounts without prior authorization.

8. On or about February 27, 2006, Mitchell provided a response to the First Rule 8210 Request (Mitchell's First Response). In Mitchell's First Response, she stated: "When I was asked by my boss...whether I had made any changes to any VALIC clients' sub-accounts, I confirmed I had...I did so believing that written client authorization was not required...the change was made over a two-to-three hour period on one evening while I was isolated from my client [sic] and out of touch with my office after Hurricane Wilma. Due to my close relationship with my clients I believe that I at least had their implied consent to make changes."

9. Separately, in Mitchell's First Response, she also stated that she had sent to her supervisor a certain email that she had prepared in response to the firm's inquiries regarding

customer NP's complaint. This email contained a list of customers and purported to reflect the customer accounts in which Mitchell had made sub-account changes on or about October 24, 2005.

10. On March 29, 2006, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210, FINRA issued to Mitchell a further request for information in connection with FINRA's investigation of Mitchell's conduct alleged above (Second Rule 8210 Request). The Second Rule 8210 Request requested additional information to clarify Mitchell's prior response.

11. On or about May 31, 2006, Mitchell provided FINRA staff with a response to the Second Rule 8210 Request (Mitchell's Second Response). In Mitchell's Second Response, she stated that she had never written either of the emails alleged in paragraphs 7 and 9, above. Mitchell also asserted that she had obtained oral authority from each of her customers before engaging in the sub-account reallocations. The foregoing statements in Mitchell's Second Response were false because she had not in fact obtained authority from her customers, as she had earlier admitted to her firm.

12. On August 7, 2006, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210, FINRA issued to Mitchell a request for information and appearance for an OTR in connection with FINRA's investigation of Mitchell's conduct alleged in Cause One, above (Third Rule 8210 Request).

13. On or about September 7, 2006, Mitchell appeared before FINRA staff for an OTR examination. Mitchell's OTR testimony was taken under penalty of perjury and pursuant to and in accordance with NASD Procedural Rule 8210.

14. During the OTR, Mitchell testified that prior to conducting any transactions in an account of any customer identified in Exhibit A to this Complaint, Mitchell had contacted each customer by telephone and obtained the customer's authorization for Mitchell to engage in the sub-account transactions. This testimony was false because she had not in fact obtained authority from her customers, as she had earlier admitted to her firm.

15. During the OTR, Mitchell testified that she had not caused sub-account reallocations in the account of customer NP. This testimony was false because she had in fact caused the reallocations in NP's sub-accounts, as she had earlier admitted to her firm.

16. During the OTR, Mitchell produced two handwritten documents that purport to reflect a contemporaneous record of telephone calls to customers for the purpose of obtaining each customer's oral consent to the variable annuity switch transactions alleged above, with the exception of customer NP, and a listing of customer accounts that Mitchell purportedly made at the time of the sub-account reallocations. These documents were false because she had not in fact obtained authority from her customers, as she had earlier admitted to her firm.

17. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Mitchell.

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.

C. any other fitting sanction.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 24, 2007


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Maura Mitchell, Matter No. 2005003584601

Schedule A

Customer Initials		Date/Time Entered
1.	AR	10/27/05 11:38 a.m.
2.	AS	10/23/05 3:19 p.m.
3.	BG	10/27/05 11:05 a.m.
4.	BR1	10/26/05 9:18 p.m.
5.	BR2	10/27/05 11:42 a.m.
6.	CC	10/23/05 3:27 p.m. 10/27/05 11:12 a.m.
7.	CP	10/23/05 3:11 p.m.
8.	DA	10/26/05 8:42 p.m.
9.	DB	10/27/05 11:10 a.m.
10.	DG	10/26/05 10:29 p.m.
11.	DN	10/27/05 11:08 a.m.
12.	DR1	10/26/05 9:00 p.m.
13.	DR2	10/27/05 11:36 a.m.
14.	EJ	10/26/05 10:22 p.m.
15.	GR	10/25/05 11:02 p.m.
16.	HB	10/27/05 11:21 a.m.
17.	JH	10/26/05 2:50 p.m.
18.	JW1	10/26/05 3:19 p.m.
19.	JW2	10/26/05 9:20 p.m.
20.	KB	10/27/05 11:09 a.m.
21.	LB	10/26/05 8:40 p.m.
22.	LS1	10/26/05 9:03 p.m.
23.	LS2	10/27/05 11:13 a.m.
24.	MF	10/26/05 10:35:30 p.m.
25.	MP	10/26/05 9:21 p.m.
26.	NP	10/26/05 1:47:35 p.m.
27.	OR	10/27/05 11:50 a.m.
28.	PR	10/26/05 8:38 p.m.
29.	RH	10/26/05 8:57 p.m.
30.	RJ	10/26/05 8:56 p.m.
31.	RP	10/26/05 9:05 p.m.
32.	SD	10/27/05 11:34 a.m.
33.	TC	10/27/05 11:20 a.m.
34.	TG	10/23/05 3:27 p.m.
35.	TS	10/26/05 8:51 p.m.
36.	VB	10/27/05 11:58 a.m.
37.	WB	10/25/05 11:17 p.m.
38.	WC	10/26/05 2:16 p.m.
39.	YR	10/27/05 11:40 a.m.
40.	YT	10/26/05 9:07 p.m.