

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GARY MICHAEL LASKOWSKI
(CRD No. 2770649),

Respondent.

Disciplinary Proceeding
No. 2006003916901

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

August 13, 2010

Respondent is suspended from associating with any FINRA member in any capacity for one year and fined \$10,000 for acting as an unregistered principal, in violation of Rules 1021(a) and 2110.

Appearances

Paul D. Taberner, Esq., Boston, MA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On March 11, 2009, the Department of Enforcement ("Enforcement") filed the attached Complaint in this matter against Respondents Richard Michael Bowers ("Bowers") and Gary Michael Laskowski ("Respondent"). The Complaint alleges that Respondent acted as a principal of member firm First Dunbar Securities Corporation (the "Firm") without being registered as such, in violation of NASD Membership and Registration Rule 1021(a) and NASD Conduct Rule 2110. The Complaint further alleges that Bowers permitted Respondent to act as a principal without being properly registered and failed to establish, maintain, and enforce a supervisory system and written supervisory procedures ("WSPs") reasonably designed to achieve

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compliance with applicable securities rules and regulations, in violation of NASD Membership and Registration Rule 1021 and NASD Conduct Rules 3010 and 2110.¹

Bowers filed an Answer to the Complaint, denying the alleged violations and requesting a hearing. A hearing on the allegations against Bowers was held before a Hearing Panel in Boston, Massachusetts, on October 6 and 7, 2009. On April 20, 2010, the Hearing Panel issued a separate decision on the Complaint against Bowers. This default decision addresses the charges against Respondent.

Respondent failed to file an Answer to the Complaint. Accordingly, an Order holding him in default was entered on May 6, 2009. On June 14, 2010, Enforcement filed a Motion for Entry of Default Decision on the charges against Respondent, supported by the Declaration of Paul D. Taberner, Esq. ("Taberner Decl.") and four exhibits. Respondent did not file a response to the Motion. The factual determinations in this Decision are based on the Taberner Decl., the exhibits filed by Enforcement with its Motion ("CX"), and the evidence admitted at the Bowers hearing, including hearing exhibits ("Hearing CX") and the transcripts of the sworn testimony ("Tr."). For the reasons set forth below, Enforcement's motion is granted.

II. Origin of Investigation

The investigation that led to this disciplinary proceeding followed FINRA Staff's ("Staff") routine examination of the Firm's books and records.

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the Rules that were in effect at the time of Respondent's alleged misconduct. In addition, because Enforcement filed the Complaint after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

III. Respondent's Default

On March 11, 2009, Enforcement served Respondent with the Complaint and Notice of Complaint by first-class and certified mail at his last known residential address reflected in the Central Registration Depository (the "CRD" address).² CX-2; Taberner Decl. ¶ 18. The certified mailing was returned, marked, "Unclaimed." Taberner Decl. ¶ 19. The first-class mailing was not returned. *Id.* Respondent did not file an Answer. Taberner Decl. ¶¶ 20, 24.

In the same manner, on April 13, 2009, Enforcement served Respondent with the Complaint and Second Notice of Complaint at his CRD address. Taberner Decl. ¶ 21. The certified mailing was returned, marked, "Unclaimed." CX-4; Taberner Decl. ¶ 22. The first-class mailing was not returned. Taberner Decl. ¶ 22. Respondent again did not file an Answer. Taberner Decl. ¶¶ 23, 24.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving him constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted.

IV. Jurisdiction

Respondent has never been registered with FINRA. During all times relevant to the Complaint, Respondent was the sole manager of VPC Holdings, LLC, which owned the Firm. CX-1; Hearing CX-17. As discussed below, Respondent was engaged in the securities and/or investment banking business of the Firm from at least December 2004 until at least early September 2008. Respondent was therefore an associated person of the Firm pursuant to Article I of NASD's By-Laws. FINRA has jurisdiction to bring this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint charges Respondent with misconduct

² Respondent confirmed that the CRD address was his then current address during his May 3, 2007, on-the-record testimony before the Staff. CX-2.

while he was an associated person and Enforcement filed the Complaint within two years of his last association with the Firm.

V. Violation – Respondent Acted as an Unregistered Principal

The Complaint alleges that, from at least December 2004 through September 2008, Respondent engaged in principal activity at the Firm without being registered, in violation of NASD Rules 1021(a) and 2110. Rule 1021(a) provides that “[a]ll persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with [FINRA]”

It is important for registrants to comply with FINRA registration requirements. The National Business Conduct Committee stated:

The requirement that a person . . . must register as a principal when actively engaged in a firm’s securities business is an important one. This requirement assists in the policing of the securities markets. It also ensures that a person in a position to exercise some degree of control over a firm has a comprehensive knowledge of the securities industry and its related rules and regulations. This, in turn, enhances investor protection. We deem it essential to the well-being of the investing public that persons engaged in a firm’s securities business strictly adhere to the proper registration requirements.

DBCC v. Pecaro, No. C8A960029, 1998 NASD Discip. LEXIS 13, at *22 (NBCC Jan. 7, 1998).

Rule 1021(b) defines principals as “[p]ersons associated with a member [in listed categories] who are actively engaged in the management of the member’s investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions.”³

The SEC has held that persons not falling within any of the listed categories are nonetheless principals “where . . . the requirement of active engagement in the management of

³ The categories of associated persons listed in Rule 1021(b) are sole proprietors, officers, partners, managers of Offices of Supervisory Jurisdiction, and directors of corporations.

the member's investment banking or securities business is satisfied." Dennis Todd Lloyd Gordon, Exchange Act Rel. No. 57655, 2008 SEC LEXIS 819, at *25 n. 31 (Apr. 11, 2008).

Activities such as directing and hiring employees, involvement in firm finances, participation in management decisions, frequent communications, and leadership of personnel have been found to indicate active engagement in a firm's securities business. Id. at *26, 30; See, e.g., Richard F. Kresge, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, **49-50 (June 29, 2007) (providing financial support, playing a substantial role in the finances of the office, and active involvement in hiring and meetings, and leadership of personnel constituted active engagement in the management of the firm's securities business), Kirk A. Knapp, 50 SEC 858, 860-61 (1992) (participating in firm meetings and hiring firm personnel constituted active engagement in the management of the firm's securities business).

As applied to this case, Respondent was actively engaged in the Firm's securities business. He was in frequent communication with Firm personnel, particularly regarding broker recruitment and hiring. He was also involved in a variety of other areas relating to the Firm's expenses, including office equipment, budgets, employee issues, and commission payouts, among other things. Hearing CX-5 p. 22-42, Hearing CX-6 p. 16-18, Hearing CX-9 pp. 4, 9, 12; Tr. 412. Respondent issued directives to Firm personnel, who readily responded to his direction. Hearing CX-6 p. 9, Hearing CX-7; Tr. 405-7. Using his financial clout, Respondent was able to effectively assert his will, even when there was disagreement over his approach. Hearing CX-7; Tr. 391-95, 429. He also provided financial support to the Firm.⁴

⁴ Respondent controlled VPC Holdings, LLC ("VPC"), which, in turn, owned the Firm. Hearing CX-14 p. 1, Hearing CX-17 p. 3, Hearing CX-21 pp. 8, 11, 13-14, 17, 26-28, 30-31. Because the Firm had difficulty maintaining its net capital requirement, it relied upon Respondent, through VPC, to provide infusions of capital. Hearing CX-1, Hearing RX-10 p. 3; Hearing CX-21 p. 12; Tr. 138, 141.

Based on the foregoing, the Hearing Officer finds that Respondent acted as a principal without being registered as such, in violation of NASD Rules 1021 and 2110.

VI. Sanctions

The FINRA Sanction Guidelines for registration violations recommend a fine of \$2,500 to \$50,000 and consideration of a suspension for up to six months, or, in egregious cases, a longer suspension or bar. FINRA Sanction Guidelines ("Guidelines") at 48. Enforcement characterized Respondent's misconduct as egregious and requested a one-year suspension in all capacities and a \$10,000 fine.

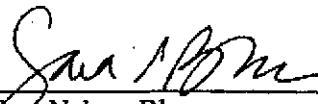
The Hearing Officer finds that Enforcement's request is appropriate. The Guidelines suggest consideration of the nature and extent of the unregistered person's responsibilities at the Firm. Here, Respondent's involvement was significant and spanned a period of several years. And although Respondent's activities did not relate to the Firm's ability to protect investors, it involved a wide range of activities and continued even after Respondent became aware of Staff's December 2004 Exit Conference memorandum and February 2005 Letter of Caution citing him for acting as a principal without registration.⁵ Respondent's continued principal activities following this letter of caution is an aggravating factor which supports a finding that Respondent's misconduct was egregious. After careful consideration, the Hearing Officer finds that a one-year suspension in all capacities and a \$10,000 fine is warranted.

VII. Conclusion

Respondent is suspended from associating with any FINRA member in any capacity for one year and fined \$10,000 for acting as an unregistered principal, in violation of Rules 1021(a) and 2110. If this Default Decision becomes the final disciplinary action of FINRA, the

⁵ Hearing CX-1 p. 1; Hearing CX-2 p. 3; Taberner Decl. ¶ 12.

suspension shall begin on September 20, 2010, and end at the close of business on September 19, 2011. The fine shall be due and payable if and when Respondent re-enters the securities industry.


Sara Nelson Bloom
Hearing Officer

Copies to:

Gary Michael Laskowski *(via first-class mail & overnight courier)*
Paul D. Taberner, Esq. *(via first-class and electronic mail)*
David F. Newman, Esq. *(via first-class and electronic mail)*
Mark Dauer, Esq. *(via electronic mail)*
David R. Sonnenberg, Esq. *(via electronic mail)*

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

GARY MICHAEL LASKOWSKI
(CRD No. 2770649),

AND

RICHARD MICHAEL BOWERS
(CRD No. 1263206),

RESPONDENTS.

DISCIPLINARY PROCEEDING
No. 2006003916901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From at least December 2004 until at least September 2008, Respondent Gary Michael Laskowski performed various functions at former FINRA member firm First Dunbar Securities Corporation (the Firm) that required principal registration with FINRA. Nevertheless, Laskowski has never been registered with any FINRA member firm in any capacity. Further, Laskowski continued to act as an unregistered principal, even though he was aware that, in December 2004, FINRA staff had notified the Firm that its examination had found that the Firm had improperly allowed him to act as an unregistered principal. Laskowski's conduct violated NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110.

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2. Respondent Richard Michael Bowers, who became the Firm's Chief Compliance Officer in September 2005 and its President in February 2006, was also aware of FINRA's examination findings, but nonetheless allowed Laskowski, from September 2005 through January 2007, to act as an unregistered principal of the Firm. From September 2005 through August 2006, Bowers also failed to ensure that the Firm's supervisory system and written supervisory procedures (WSPs) were reasonably designed to ensure compliance with the federal securities laws and regulations and FINRA rules with respect to, among other things, the appropriate registration of personnel and the conduct of internal inspections of branch office locations. Bowers' conduct violated NASD Membership and Registration Rule 1021 and NASD Conduct Rules 3010 and 2110.

RESPONDENTS AND JURISDICTION

3. In November 1985, Respondent Bowers first became registered as a General Securities Representative through a FINRA member firm. From October 7, 2002 through October 1, 2008, Bowers was employed by the Firm. From April 9, 2004 through October 1, 2008, Bowers was registered as a General Securities Principal, and, from January 20, 2005 through October 1, 2008, he was registered as a General Securities Representative. From September 9, 2005 until October 1, 2008, Bowers also served as the Chief Compliance Officer of the Firm. In February 2006, Bowers became President of the Firm and held that position until he left its employment. Bowers is currently registered with another FINRA member firm.

4. Respondent Laskowski has never been registered with FINRA in any capacity. Laskowski is listed in FINRA Web CRD as an indirect owner of another

FINRA member firm. During all times relevant to this Complaint, Laskowski was the sole Manager of VPC Holdings, LLC, which owned the Firm from approximately September 2003 through at least December 1, 2008, when its FINRA registration was terminated. As is more fully addressed below, Laskowski was engaged in the securities and/or investment banking business of the Firm from at least December 2004 until at least early September 2008. Laskowski was therefore an associated person of the Firm pursuant to Article I, Section (rr) of FINRA's By-Laws. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Laskowski for the purposes of this Complaint, in that the misconduct alleged in the First Cause of Action occurred while Laskowski was associated with a member firm and the filing of this Complaint occurred within two years of his last association with a member firm.

FIRST CAUSE OF ACTION

**ACTING AS AN UNREGISTERED PRINCIPAL
PERMITTING AN INDIVIDUAL TO ACT AS AN UNREGISTERED PRINCIPAL
RESPONDENTS LASKOWSKI AND BOWERS
(NASD Membership and Registration Rule 1021 and Conduct Rule 2110)**

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. In December 2004, FINRA staff conducted an "Exit Conference" with Firm staff, including Bowers, to report the findings of their 2004 routine examination of the Firm's books and records and operations. Among the deficiencies noted by the staff was that the Firm had allowed Laskowski to act as an unregistered principal throughout 2004. In February 2005, FINRA staff required the Firm to submit a response indicating how the various deficiencies were to be addressed.
7. In response, the Firm sent a letter, dated March 1, 2005, to FINRA in

which it stated that Laskowski was not "taking an active role in the management of the company." Bowers was aware of FINRA's notice and the Firm's response.

8. Contrary to the Firm's representation to FINRA, however, Laskowski was acting as an unregistered principal. Specifically, from at least December 2004 until at least September 2008, Laskowski was actively engaged in the management of the Firm's securities business. Specifically, he engaged in the following activities that required principal registration with FINRA:

- a. directing the Firm's registered principals in the conduct of investment banking due diligence activities;
- b. directing the Firm's registered principals on when to sign investment banking contracts;
- c. directing Firm personnel in the payment of commissions and other expenses;
- d. participating in the hiring and termination of Firm personnel;
- e. setting compensation for Firm personnel;
- f. directing Firm principals in their efforts to identify acquisition targets; and
- g. negotiating with a prospective acquisition target on behalf of the Firm.

9. From September 2005 through January 2007, while the Firm's Chief Compliance Officer, Bowers was aware of Laskowski's activities as an unregistered principal. During this period, Bowers was responsible for ensuring that all Firm personnel were appropriately registered.

10. Nevertheless, from September 2005 through January 2007, the Firm, acting through Bowers, permitted Laskowski to continue acting as an unregistered principal.

11. By engaging in activities requiring registration as a principal without being registered as such, Laskowski violated NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110.

12. By permitting Laskowski to engage in activities requiring registration as a principal without being registered as such, Bowers violated NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110

SECOND CAUSE OF ACTION

FAILURE TO ESTABLISH, MAINTAIN AND ENFORCE A REASONABLE SUPERVISORY SYSTEM AND WRITTEN SUPERVISORY PROCEDURES

RESPONDENT BOWERS (NASD Conduct Rules 3010 and 2110)

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.

14. As Chief Compliance Officer and later President of the Firm, Bowers was responsible for ensuring that it established, maintained and enforced a supervisory system and WSPs reasonably designed to achieve compliance with the applicable rules and regulations. From September 2005 through August 2006, however, the Firm, acting through Bowers, maintained a deficient supervisory system and WSPs in that they did not:

- a. specify who is responsible for ensuring that each individual engaged in the securities or investment banking business of the Firm was properly registered and provided no instruction as to how

such registration was to be accomplished;

- b. specify who was responsible for ensuring that internal inspections of the Firm's branch office audits took place and did not identify all of the Firm's branch offices;
- c. address supervision and monitoring of the outsourcing of the Firm's accounting, payroll and other financial functions to a third-party vendor, including the manner in which information would be kept confidential; and
- d. address the review of advertising materials by Firm principals and FINRA's Advertising Department.

15. During the same time period, the Firm, acting through Bowers, failed to enforce its WSPs regarding outside business activities of registered personnel. During this period, at least three registered personnel engaged in outside business activities without receiving permission from the Firm as required by the WSPs. Bowers was aware of these activities, but never granted the representatives written permission to engage in these outside business activities as required by the WSPs.

16. By failing to ensure that the Firm's supervisory system and WSPs were reasonably designed to achieve compliance with applicable laws and regulations and failing to enforce its WSPs, Bowers, violated NASD Conduct Rules 3010 and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 11, 2009

Paul D. Taberner

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