

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MALCOLM THOMAS
(CRD No. 4650133),

Respondent.

Disciplinary Proceeding
No. 2006004663901

Hearing Officer – LBB

DEFAULT DECISION

November 5, 2007

For Respondent's forgery of firm documents in violation of Conduct Rule 2110, Respondent is barred in all capacities. Respondent is also barred for failure to provide requested information, in violation of Rules 8210 and 2110.

Appearances

William Brice La Hue, Regional Attorney, FINRA, Atlanta, GA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

On July 9, 2007, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, asserting two causes of action against Respondent Malcolm Thomas ("Respondent"). The first cause of action alleges that Respondent forged forms for the purpose of requesting compensation from his firm for work he had not done, and submitted the forged forms to his firm in violation of Conduct Rule 2110. The second cause of action alleges that Respondent failed to respond to Rule 8210 requests to submit a sworn statement and to appear for on-the-record interviews, thereby violating Rules 8210 and 2110.

The Complaint and Second Notice of Complaint were served on Respondent by first-class and certified mail at his Central Registration Depository ("CRD") address. Respondent did not file an Answer to the Complaint or to a Second Notice of Complaint. On October 9, 2007, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.¹

I. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on July 6, 2007, by first-class and certified mail to Respondent's most current residential address as listed in CRD. The Notice that was sent by certified mail was returned indicating that it was unclaimed. The Notice sent by first-class mail was not returned.

Enforcement sent the Complaint and Second Notice of Complaint to Respondent on August 14, 2007, by first-class and certified mail to the CRD address. The certified mail receipt for the Second Notice was returned but not completed. The Second Notice that was sent by first-class mail was not returned.

Respondent has not filed an Answer or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice² of this proceeding. By failing to respond, he defaulted.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the additional materials filed by Enforcement with its motion.

² Respondent had actual notice, as well. On September 18, 2007, Respondent telephoned the Office of Hearing Officers to discuss the status of his case. He indicated that he did not plan to return to the securities industry, and had not decided whether to file an Answer to the Complaint and request a hearing.

II. Jurisdiction

Respondent began his employment with FINRA³ member firm Ameriprise Financial Services, Inc., in March 2003, and was registered with Ameriprise until January 2006. He was briefly employed with another member firm in February 2006. Although Respondent has not been associated with any FINRA member since then, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his association with a member firm, and because it charges him with misconduct while he was associated with the firm and with failing to provide information requested during that two-year period.

III. Origin of the Investigation

FINRA's investigation commenced after it received an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Ameriprise on behalf of the Respondent. The Form U5 stated that "two other advisors signed forgery affidavits stating that [Respondent] signed their names to internal documents in order to gain additional compensation for coaching of the advisors that never occurred."

IV. Violations

A. Forgery

During 2005, Ameriprise had a program in place for the coaching of junior advisors. Certain advisors could assist in appointment coverage and help junior advisors with their customer appointments and sales efforts. The coaching advisors received points for coaching, and the points resulted in additional compensation. In order to receive the additional compensation, the coaching advisor would complete an Advisor Coach Compensation Payment

³ 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 (FINRA). References in this decision to FINRA include, where appropriate, NASD.

Request form ("payment request form"). The coaching advisor would sign the form, and obtain the signatures of the advisor who had been coached and a manager's signature. By signing and submitting the payment request form to Ameriprise, the coaching advisor certified that the information on the form was accurate, and that the coaching advisor had served as a coach for the transactions listed. Respondent participated in the coaching program as a coaching advisor.

The first cause of action alleges that Respondent forged payment request forms for the purpose of requesting compensation from his firm. On two occasions, Respondent submitted a payment request form to Ameriprise, certifying that he had completed coaching sessions for junior advisors, signing the form and forging the signatures of the junior advisors who had purportedly been coached and the managers whose signatures were required on the form. In fact, Respondent had not participated in the transactions by the junior advisors. Respondent has admitted that he forged signatures on the payment request forms.

Signing another person's name to documents without authority constitutes forgery. Dep't of Enforcement v. Claggett, Complaint No. 2005000631501, 2007 NASD Discip. LEXIS 27 (NAC Sept. 28, 2007). Forgery is inconsistent with just and equitable principles of trade, and therefore violates Conduct Rule 2110. Dep't of Enforcement v. Masceri, Complaint No. C8A040079, 2006 NASD Discip. LEXIS 29 (NAC Dec. 18, 2006); Dep't of Enforcement v. Geoffrey Ortiz, Complaint No. E0220030425-01, 2007 NASD Discip. LEXIS 28 (NAC Oct. 10, 2007).

Respondent signed the names of junior advisors and firm managers to payment request forms and submitted them to his firm, thereby violating Conduct Rule 2110.

B. Failure to Respond to Requests for Information

The second cause alleges that Respondent failed to respond to requests for information in violation of Procedural Rule 8210. Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation.

Respondent was contacted by FINRA staff and asked to contact the examiner to schedule a time for him to appear and provide sworn testimony. In September 2006, Respondent contacted the examiner by telephone, admitted that he had forged signatures on Ameriprise documents, but stated that he would not appear and testify.

On January 4, 2007, FINRA sent Respondent a request for information by first-class and certified mail to his CRD address. The letter requested that Respondent appear for an on-the-record interview ("OTR") on January 22, 2007. The January 4, 2007 letter that was sent by first-class mail was not returned, and the letter sent by certified mail was returned to FINRA marked "unclaimed." Respondent did not appear to testify at the OTR on January 22, 2007.

FINRA sent two requests for information to the Respondent by letters dated April 9, 2007. The first letter requested that Respondent submit a written statement to the staff responding to certain specific questions. The second letter requested Respondent to appear at an OTR on April 26, 2007. These requests were served at Respondent's CRD address by first-class and certified mail. The two letters sent by first-class mail were not returned. The two certified letters were returned to FINRA marked "unclaimed." Respondent did not submit a sworn statement or appear at the OTR.

Respondent's failure to respond to these requests for information prevented FINRA from completing its investigation, impeding its ability to carry out its regulatory mandate.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

For forgery and falsification of documents, the Guidelines recommend a suspension for up to two years, or, in egregious cases, a bar. FINRA Sanction Guidelines at 39 (2007). The Guidelines identify two principal considerations: the nature of the documents forged and whether Respondent had a good faith belief that he had authority to sign the documents.

Both considerations support a finding that this is an egregious case. Respondent forged the signatures on the documents and submitted them to his firm for the purpose of obtaining compensation that he had not earned -- effectively an attempt to convert funds. Although not expressly discussed in the papers submitted, it appears that the submission of the falsified documents could have misled Ameriprise into believing that its junior advisors were receiving coaching that they did not receive. Respondent had no authority to sign the documents. A bar is the appropriate sanction for Respondent's forgery in violation of Conduct Rule 2110.

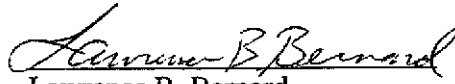
For failing to respond to requests for information, the Guidelines recommend a bar. FINRA Sanction Guidelines at 35. There is no evidence of any mitigating facts that would support a lesser sanction. In fact, Respondent informed FINRA staff before he received the requests that he did not intend to testify. A bar is also the appropriate sanction for Respondent's failure to respond to requests for information in violation of Rules 8210 and 2110.

VI. Conclusion

Respondent Malcolm Thomas is barred from associating with any FINRA member in any capacity for forgery in violation of Conduct Rule 2110. Respondent is also barred for failing to respond to requests for information, in violation of Rules 8210 and 2110.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Malcolm Thomas (*via overnight courier and first-class mail*)
 William Brice La Hue, Esq. (*via electronic and first-class mail*)
 Mark P. Dauer, Esq. (*via electronic and first-class mail*)
 David R. Sonnenberg, Esq. (*via electronic and first-class mail*)

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OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

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**MALCOLM THOMAS,
CRD No. 4650133,**

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COMPLAINT

The Department of Enforcement alleges:

1. Respondent Malcolm Thomas first entered the securities industry in about March 2003, when Ameriprise Financial Services, Inc. and IDS Life Insurance Company employed him. He became registered as a general securities representative in July 2003, and remained with Ameriprise until January 2006. Thomas is not currently registered with an NASD member, but he remains subject to NASD's jurisdiction pursuant to Article V, § 4 of the NASD By-Laws.
2. Following the termination of his registrations with Ameriprise, the firm filed an amended termination notice on Thomas's behalf that prompted NASD staff to commence an examination into Thomas's conduct. The examination found that Thomas had forged signatures of other Ameriprise employees to receive compensation for coaching junior advisors, although he had not provided such coaching services. Thomas admitted his misconduct to an NASD examiner over the telephone and in writing, but refused to provide testimony and a written statement as requested by the NASD staff.

FOR A FIRST CAUSE OF COMPLAINT
Forgery and Falsification of Documents
NASD Conduct Rule 2110

3. The allegations in paragraphs one and two are realleged and incorporated herein by reference.
4. During 2005, Ameriprise had a "coaching" program in place at the firm wherein certain advisors could assist in appointment coverage and help junior advisors with their customer appointments and sales efforts when needed. Thomas participated in the coaching program in 2005 as a coaching advisor.
5. The coaching advisors received points, which would result in payment of compensation, by completing an "Advisor Coach Compensation Payment Request" form (payment form) and submitting it to the firm. The coaching advisor would sign the payment form and obtain the signatures of the advisor(s) that was coached, as well as a manager's signature. By signing and submitting the payment form to Ameriprise, the coaching advisor certified the information on the payment form was accurate and that the coaching advisor had served as a coach for the transactions listed.
6. In or about August 2005, Thomas completed a payment form detailing that he had completed coaching sessions for junior advisors in August 2005. Before submitting the form to Ameriprise, Thomas forged the signature of T.M., a manager of the firm, to the form.
7. In or about September 2005, Thomas completed another payment form detailing that he had completed coaching sessions for advisors M.M. and A.G. for securities and life insurance transactions occurring in September 2005. Before submitting the payment form to Ameriprise, Thomas forged the signatures of M.M. and A.G. on the form.
8. Thomas had not participated in the transactions by M.M. and A.G., and falsely certified on the payment form that he had done so.

9. Such acts, practices and conducts violate NASD Conduct Rule 2110.

**FOR A SECOND CAUSE OF COMPLAINT
Failure to Testify and Failure to Provide Written Statement
NASD Rules 8210 and 2110**

10. The allegations in paragraphs one through nine are realleged and incorporated herein by reference.
11. On February 2, 2006, Ameriprise filed an amended termination notice (Form U-5) on behalf of Thomas that disclosed that, following his resignation from the firm, two advisors signed forgery affidavits stating that Thomas had signed their names to internal documents in order to gain compensation for coaching of the advisors that never occurred. As a result of this filing, NASD commenced an examination.
12. In connection with the staff's examination, Thomas was requested via letter to contact the examiner to schedule a time for him to appear and provide sworn testimony. In response to the staff's letter, Thomas contacted the examiner by telephone on September 1, 2006, and stated that he would not appear and testify. He also admitted that he forged signatures on Ameriprise documents, but stated that he would not provide further details.
13. By letter dated January 4, 2007, sent to Thomas at his CRD address of [REDACTED] [REDACTED] by first class and certified mail, Thomas was directed to appear at the Atlanta District Office and provide testimony on January 22, 2007, pursuant to NASD Rule 8210. Neither mailing, nor the return receipt for the certified mailing, was returned to the examiner by the postal service.
14. Thomas did not appear and testify on January 22nd, as requested.
15. Subsequently, the examiner sent Thomas two letters on April 9, 2007. The first letter was sent to Thomas at his CRD address detailed above by both first class and certified mail and

requested that Thomas provide a written statement to the staff responding to specific questions, pursuant to Rule 8210, by April 23, 2007. Neither mailing, nor the return receipt for the certified mailing, was returned by the postal service.

16. Thomas did not provide a written statement by April 23, 2007, and has not done so as of the date herein.
17. The second letter sent on April 9th, was also sent to Thomas at his CRD address by both first class and certified mail. This letter directed Thomas to appear at the Atlanta District Office to provide testimony on April 26, 2007, pursuant to Rule 8210. Neither mailing, nor the return receipt for the certified mailing, was returned by the postal service.
18. Thomas did not appear and testify on April 26, 2007.
19. By failing to appear and testify on January 22 and April 26, 2007, and by failing to provide the written statement as requested in the April 9th letter, Thomas violated NASD Procedural Rule 8210 and Conduct Rule 2110.

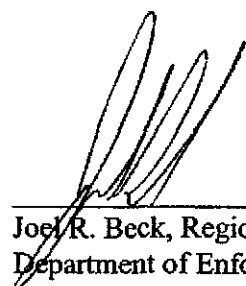
PRAYER FOR RELIEF

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; and
- 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.

NASD DEPARTMENT OF ENFORCEMENT

July 6, 2007.



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