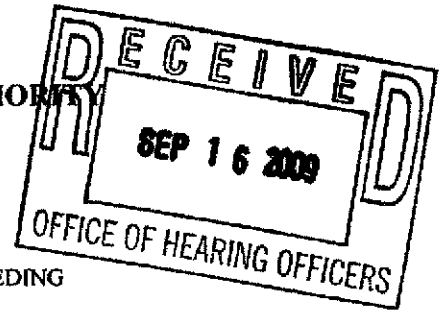


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REGISTRATION & DISCIPLINE

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS



Department of Enforcement,

Complainant,

v.

Louis Tomasello, III,
(CRD No. 2260987),

Respondent.

DISCIPLINARY PROCEEDING
No. 2006004832901

Hearing Officer: LBB

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: September 16, 2009

INTRODUCTION

Disciplinary Proceeding No. 20060048328901 was filed on May 22, 2009 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Louis Tomasello, III (Tomasello) submitted an Offer of Settlement (Offer) to Complainant on August 15, 2009. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of

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findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Tomasello entered the securities industry in June 1992 when he associated with FINRA member firm John Hancock. In August 1992, Tomasello became registered as an Investment Company and Variable Contracts Products representative (Series 6). In October 1999, Tomasello joined FINRA member firm Nationwide Investment Services Corporation (NISC or the Firm). At all relevant times, Tomasello was registered with NISC. In May 2004, Tomasello left NISC and was subsequently employed at other member firms until October 17, 2008. Tomasello is not currently associated with any FINRA member firm but remains within the jurisdiction of FINRA pursuant to Article V, Section 4 of the FINRA By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

Between January 2003 and April 2004, Tomasello misappropriated or converted funds from his employer, NISC, by submitting seven false and misleading invoices and expense reports requesting reimbursement of limousine service expenses. Tomasello was reimbursed by NISC for these expenses in the total amount of \$5,716. By falsifying invoices and expense reports submitted to NISC, Tomasello caused NISC to have false books and records. Tomasello also improperly provided gifts in excess of \$100 to registered representatives at another member firm.

Lastly, Tomasello provided false statements and testimony to NASD (now, FINRA) staff and further failed to provide all documents requested of him by the Department of Enforcement.

FIRST CAUSE OF ACTION

(Misappropriation/Conversion – Violations of NASD Conduct Rule 2110)

1. During the relevant period, January 1, 2003 through April 30, 2004, Tomasello was a wholesaler in NISC's financial institutions sales channel. Among other things, Tomasello met with third party brokers at financial institutions in New England to promote sales of variable annuities of Nationwide Life Insurance Company, an affiliate of NISC.
2. Throughout the relevant period, Tomasello used the services of ATR Limousine, a Boston area limousine and town car service, for business involving other brokers. NISC provided Tomasello with a corporate American Express (AMEX) credit card to charge business expenses. Tomasello used the corporate AMEX credit card to charge ATR limousine services for business purposes. In fact, ATR Limousine kept Tomasello's corporate AMEX credit card number on file. None of the limousine services at issue, however, were charged to Tomasello's corporate AMEX credit card.
3. On seven occasions that Tomasello claimed to have used the ATR Limousine service during the relevant period, he submitted false and misleading invoices and expense reports to the Firm and improperly sought and received reimbursement from the Firm for business trips he did not take.
4. For each purported limousine or town car service claim Tomasello submitted to NISC, he identified a business purpose (such as, "Branch Recognition") and the purported attendees of the service (a total of 14 individuals in this case, each of whom was registered with a financial institution within Tomasello's coverage area in New England).

5. Following each purported limousine service, Tomasello submitted an expense report to his supervisor at NISC and sent the invoice to the firm's Columbus office for reimbursement.

6. All seven expense reports at issue were approved and the Firm reimbursed Tomasello for the expenses by posting the amounts electronically into his designated Sovereign Bank savings account. The total amount reimbursed to Tomasello by NISC for these seven bogus limousine services was \$5,716.

7. Specifically, on or about January 23, 2003, Tomasello falsely claimed to have incurred \$1,080 in limousine expenses for a casino event for Fleet/Citizens Top Producer Recognition. On his expense report, Tomasello falsely listed five persons as attendees for this event: ND, SM, SB, MV, and JH. The invoice submitted by Tomasello for this alleged expense was a copy of a December 19, 2002 limousine invoice – after Tomasello altered the report date, occasion, pickup time and amount.

8. Tomasello also submitted an Activity Report to his supervisor at NISC for January 23, 2003, as well as for certain other dates where he falsely claimed to have engaged ATR limousine services during the relevant period. Tomasello submitted Activity Reports to his supervisor to document the names of individuals and offices he had ostensibly visited during the period identified. However, the Activity Report submitted by Tomasello for January 23, 2003 does not reflect any business dealings with any of the individuals listed as attendees on the expense report he submitted for the limousine service for that date. In addition, the purported attendees did not use limousine services provided by Tomasello or NISC or in connection with any NISC event on that date.

9. On or about February 28, 2003, Tomasello falsely claimed to have incurred \$944 in limousine expenses for Citizens Branch Recognition Sponsorship to Boston. On his expense report, Tomasello falsely listed the following attendee for this event: MV. The invoice submitted by Tomasello for this alleged expense was a copy of a September 28, 2003 limousine invoice – after Tomasello altered the report date, and amount. The Activity Report submitted by Tomasello for February 28, 2003 does not reflect any business dealings with the individual listed as the attendee on the expense report he submitted for the limousine service. In addition, the purported attendee did not use any limousine service provided by Tomasello or NISC or in connection with any NISC event on that date.

10. On or about August 29, 2003, Tomasello falsely claimed to have incurred \$898 in limousine expenses for Red Sox and Mohican Sun events for Fleet/Citizens Top Producer Recognition. On his expense report, Tomasello falsely listed the following attendees for this event: ND, SM, SB, and LM. The invoice submitted by Tomasello for this alleged expense was a copy of an April 11, 2003 invoice – however, the date and prior credit card information were again changed by Tomasello. In addition, the purported attendees did not use limousine services provided by Tomasello or NISC or in connection with any NISC event on that date.

11. On or about November 21, 2003, Tomasello falsely claimed to have incurred \$544 in limousine expenses for Fleet Branch Meeting Sponsorship to Boston. On his expense report, Tomasello falsely listed the following attendee for this event: DL. The invoice submitted by Tomasello for this alleged expense was a copy of a September 28, 2003 limousine invoice or the false February 28, 2003 limousine invoice – for which Tomasello altered the date and amount. The Activity Report submitted by Tomasello for November 21, 2003 does not reflect any business dealings with the individual listed as the attendee on the expense report he submitted for

the limousine service. In addition, the purported attendee did not use limousine services provided by Tomasello or NISC or in connection with any NISC event on that date.

12. On or about February 1, 2004, Tomasello falsely claimed to have incurred \$760 in town car expenses for Fleet/Citizens Top Producer Recognition. On his expense report, Tomasello falsely listed the following attendees for this event: SM, SB, LM, and MM. In addition, the purported attendees did not use town car services provided by Tomasello or NISC or in connection with any NISC event on that date.

13. On or about February 27, 2004, Tomasello falsely claimed to have incurred \$750 in town car expenses for Infinex Top Producer Recognition. On his expense report, Tomasello falsely listed the following attendees for this event: BA, DG, TG, KB and JM. The Activity Report submitted by Tomasello for February 27, 2004 does not reflect any business dealings with any of the individuals listed as the attendees on the expense report he submitted for the town car service. In addition, the purported attendees did not use town car services provided by Tomasello or NISC or in connection with any NISC event on that date.

14. Finally, on or about April 9, 2004, Tomasello falsely claimed to have incurred \$740 in town car expenses for Fleet/Citizens. On his expense report, Tomasello falsely listed the following attendees for this event: ND, SM, SB, LM and JH. However, the purported attendees did not use town car services provided by Tomasello or NISC or in connection with any NISC event on that date.

15. With the invoices and expense reports Tomasello submitted to NISC for each of the seven separate occasions described above, Tomasello affirmatively misrepresented the improper charges for the use of the limousine service as legitimate business expenses in order to induce the Firm to pay him for expenses that were never incurred.

16. NISC paid the charges falsely submitted by Tomasello, in the total amount of \$5,716.

17. Tomasello converted and misappropriated the reimbursed funds to his own use and benefit after having falsely induced the Firm to pay for the bogus charges by claiming them as legitimate business expenses.

18. The conduct described above constitutes seven separate and distinct violations of NASD Conduct Rule 2110 by Tomasello in that he wrongfully converted and misappropriated funds from NISC.

SECOND CAUSE OF ACTION

(Causing Firm to Have False and Inaccurate Books and Records
– Violations of NASD Conduct Rules 3110 and 2110)

19. As described above, Tomasello submitted seven false ATR Limousine Service invoices and seven false expense reports to NISC, all of which misrepresented limousine service charges that were never incurred.

20. In addition, Tomasello falsely listed the following 14 attendees in connection with those seven limousine services: ND, SM, SB, MV, JH, LM, DL, MM, JH, BA, DG, TG, KB, and JM.

21. For four of the seven invoices he submitted, Tomasello used the same invoices he had previously submitted for other limousine services, but altered the information in the invoices (dates, amounts, etc.) to fit the expense report submitted.

22. As a result, Tomasello was improperly reimbursed by NISC in an amount totaling \$5,716 for false expenses, thereby causing the Firm to carry on its books and records payments for business expenses that never occurred.

23. Because Tomasello intentionally submitted false invoices and expense reports in connection with expenses that were not legitimate business expenses, he caused his firm to have false books and records with regard to those expenses. As such, Tomasello violated NASD Conduct Rules 3110 and 2110 by causing his Firm to have false and inaccurate books and records, in violation of NASD Conduct Rules 3110 and 2110 and §17(a) of the Securities Exchange Act of 1934 and SEC Rule 17a-3 promulgated thereunder.

THIRD CAUSE OF ACTION

(Improper Gifts – Violations of NASD Conduct Rules 3060 and 2110)

24. On or about December 15, 2003, Tomasello charged to his corporate AMEX credit card, an LCD TV worth \$499.99 and a digital video camera worth \$279.99. On or about the same date, Tomasello improperly provided the TV and video camera to three registered representatives (JR, LM and SB) of another member firm.

25. Rule 3060 prohibits the giving of anything of value in excess of \$100 per individual per year to another person where the payment is in relation to the business of the employers of the recipient of the payment.

26. By giving the LCD TV and digital video camera, totaling \$779.98, to three registered representatives of another member firm, Tomasello provided something of value in excess of \$100 to each individual. These gifts were in relation to the business of Tomasello's employer, NISC, and accordingly, were made in violation of NASD Rules 3060 and 2110.

FOURTH CAUSE OF ACTION

(False Statements and Misleading Statements and Failure to Provide Documents
– Violations of NASD and FINRA Rules 8210 and 2110)

27. Tomasello violated Rules 8210 and 2110 in the following ways:

a. On or about October 10, 2006, in response to a request for information and documents made pursuant to NASD Rule 8210, as issued by the Chicago District office to Tomasello on or about September 6, 2006, Tomasello falsely denied that he submitted false or inaccurate expense reports to NISC or that he submitted expense reports for business expenses that did not occur. Specifically, Tomasello stated:

“The suggestion that I submitted inaccurate expense reports . . . is false. I never submitted inaccurate expense reports”

This written statement was false.

b. Similarly, during on-the-record testimony taken of Tomasello on April 10, 2008 by the Department of Enforcement pursuant to NASD Rule 8210, which requires an individual to provide complete and truthful testimony under oath, Tomasello again falsely denied having submitted the bogus expense reports, as described above. Specifically, during testimony, Tomasello was asked the following question and provided the following answer:

Q: Did you ever submit an expense report for reimbursement that did not accurately reflect an expense you had actually incurred?

A: No.

This testimonial statement was false.

c. Tomasello also failed to provide documents, as requested on multiple occasions by the Department of Enforcement – in particular, bank records and credit/debit card records and statements. These documents were requested pursuant to NASD Rule 8210 in letters to Tomasello dated on or about July 18, 2008, November 14, 2008 and November 24, 2008 and pursuant to FINRA Rule

8210 by letter to Tomasello dated on or about February 4, 2009. Notwithstanding the Department of Enforcement's repeated efforts to obtain these documents and Tomasello's receipt of these requests, Tomasello failed to provide copies of the requested documents.

28. The above conduct, as set forth in detail in paragraph 27, constitutes five separate and distinct violations of NASD Rules 8210 and 2110 and one violation of FINRA Rules 8210 and 2110 by Tomasello.

Based upon these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

Barred from association with any FINRA member in any capacity.

Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read 'K. Malfa', written over a horizontal line.

Katherine A. Malfa
Vice President and Chief Counsel
FINRA – Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
Telephone: 202.974.2853
Facsimile: 202.721.8341
E-mail: Katherine.Malfa@finra.org