

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TIMOTHY TYRONE CALAWAY
(CRD No. 2273397),

Respondent.

Disciplinary Proceeding
No. 2006005441801

Hearing Officer – LBB

DEFAULT DECISION

May 16, 2008

For Respondent's failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110, Respondent is barred in all capacities. In light of the bar, no further sanction is imposed for Respondent's exercise of discretionary authority without written client authorization and without his firm's acceptance, in violation of Conduct Rules 2510(b) and 2110.

Appearances

Karen E. Whitaker, Regional Counsel, FINRA, Dallas, TX, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

On December 12, 2007, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, asserting two causes of action against Respondent Timothy Tyrone Calaway ("Respondent"). The first cause of action alleges that Respondent exercised discretionary authority in a customer's account without written authorization from the customer and in violation of his firm's procedures, in violation of Conduct Rules 2510(b) and 2110. The second cause of action alleges that Respondent failed to respond fully to a Procedural Rule 8210

request for information and to follow-up requests for information, thereby violating Rule 8210 and Conduct Rule 2110.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On March 10, 2008, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to NASD 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 December 11, 2007, by first-class regular and certified mail to Respondent's most current residential address as listed in the Central Registration Depository ("CRD"), and to three additional addresses that were obtained by computer searches. The envelope sent by regular first-class mail to Respondent's CRD address was not returned by the U.S. Postal Service. The envelope sent to Respondent's CRD address by certified mail was returned by the U.S. Postal Service marked "Unclaimed, Return To Sender." The mailings sent to Respondent at the three other addresses were all returned to the FINRA district office by the Postal Service.

Enforcement sent the Complaint and Second Notice of Complaint to Respondent on January 11, 2008, by first-class regular and certified mail to Respondent's CRD address and to the other three addresses. The mailings sent to Respondent's CRD address were returned by the U.S. Postal Service, marked "Moved, Left No Address, Unable To Forward, Return To Sender." The mailings sent to the other three addresses were also returned by the Postal Service.

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

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials filed by Enforcement with its motion, including certain supplemental materials concerning Respondent's employment and registration history.

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

II. Jurisdiction

Respondent entered the securities industry in July 1992 as an associated person of a FINRA member firm. Between January 1994 and November 2003, he registered with seven other member firms. He registered with SWS Financial Services ("SWS") in November 2003. SWS terminated his employment on May 23, 2006, and he has not registered with another FINRA member firm. 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(a)(i) of FINRA's By-Laws, because the Complaint was filed within two years after his firm filed an amendment to the notice of termination, 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 upon receipt of an amended Form U5 on May 30, 2006, disclosing the receipt of a customer complaint against Respondent. The amended Form U5 disclosed that SWS customer JM had complained that Respondent had "recommended transactions that were outside of the trading parameters set with the customer resulting in losses to the account."

IV. Violations

A. Respondent Exercised Discretionary Authority in a Customer's Account in violation of Conduct Rules 2510(b) and 2110

NASD Conduct Rule 2510(b) provides:

No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

The Complaint alleges in the first cause of action that JM opened a brokerage account with SWS in January 2004, and that Respondent served as the representative on the account. Approximately one year later, JM verbally gave Respondent discretionary authority to trade options in his account, but Respondent never received written authorization. SWS did not permit discretionary accounts at that time and therefore never accepted JM's account as discretionary. Despite not receiving written authorization from his customer or acceptance by his firm, Respondent exercised discretionary authority in JM's securities account, and his trading resulted in the loss of \$65,000.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent exercised discretionary authority without proper authorization from his customer or his firm, in violation of Conduct Rules 2510(b) and 2110.²

B. Respondent Failed to Respond to Requests for Information in Violation of Procedural Rule 8210 and Conduct Rule 2110

The second cause of action of action alleges that Respondent provided an incomplete response to a request for information and failed to respond to subsequent requests for

² By violating Rule 2510(b), Respondent also violated Rule 2110. *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *14 n.8 (N.A.C. Feb. 12, 2007) ("A violation of another ... NASD rule ... is also a violation of NASD Conduct Rule 2110.")

information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. A violation of Rule 8210 is also a violation of Rule 2110. *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

Pursuant to Rule 8210, FINRA staff sent Respondent a request for information to which Respondent hand-delivered a partial response. FINRA staff sent Respondent two follow-up requests at his CRD address and to the three addresses obtained by the staff's computer search, in accordance with Rule 8210(d). Respondent never responded to the follow-up requests for information.

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 Procedural Rule 8210 and Conduct Rule 2110.

V. Sanctions

For failing to respond to requests for information pursuant to Procedural Rule 8210 and Conduct Rule 2110, the Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35 (2007). Where there are mitigating factors, a suspension of up to two years should be considered. The Guidelines identify two principal considerations: (1) the nature of the information requested, and (2) whether the requested information has been provided and, if so, the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.

The principal considerations support the imposition of the bar in this case. Enforcement requested information on whether Respondent was the broker of record for all of the transactions

in JM's account; whether discretion had been exercised in JM's account; and if so, the number and percentage of discretionary trades and the time period during which discretion was exercised. All of the information requested was important to a determination of whether Respondent had violated Rule 2510(b), and if so, the egregiousness of the violation. The importance of the information sought is an aggravating factor.

Respondent has never responded to the follow-up requests for information. While a partial response might, in some instances, be a mitigating factor, it is not mitigating here because of the importance of the information and the complete failure to respond to the follow-up requests. Because of the absence of mitigating factors and the presence of a significant aggravating factor, a bar is the appropriate sanction for the failure to respond to the information requests.

In light of the imposition of a bar for Respondent's failure to provide information, in violation of Procedural Rule 8210 and Conduct Rule 2110, no additional sanction is imposed for Respondent's exercise of discretionary authority without proper authorization, in violation of Conduct Rules 2510(b) and 2110. If a bar were not imposed for the failure to provide information, a sanction of a suspension of 20 business days in all capacities and a fine of \$5,000 would be appropriate and consistent with the Sanction Guidelines. *FINRA Sanction Guidelines* at 90. Respondent's discretionary trading violated his firm's policies, but the exercise of discretionary authority was expressly authorized by the customer. Accordingly, a sanction in the middle of the sanctions for egregious violations would have been ordered.

Enforcement has not requested restitution for the trading losses that resulted from the discretionary trading, and does not contend that the discretionary trading was inconsistent with the customer's verbal request. Accordingly, restitution is not ordered.

VI. Conclusion

Respondent Timothy Tyrone Calaway is barred from associating with any FINRA member in any capacity for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

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

SO ORDERED.

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard
Hearing Officer

Copies to: Timothy Tyrone Calaway (*via overnight courier and first-class mail*)
Karen E. Whitaker, 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*)

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**TIMOTHY TYRONE CALAWAY
CRD No. 2273397,**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2006005441801**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

This matter involves registered representative Timothy Calaway, who exercised discretionary trading power in a customer's brokerage account without proper written authorization from either the customer or his employer FINRA member firm, and who failed to completely respond to FINRA requests for information.

JURISDICTION

1. Timothy Tyrone Calaway entered the securities industry in July 1992, when he associated with a FINRA member firm. He subsequently associated with seven other member firms before registering with SWS Financial Services (SWS) in November 2003. He was terminated from SWS on May 23, 2006 and, since then, he has not registered with another FINRA member firm. During his career in the securities industry, Calaway obtained Series 7

and 63 securities licenses. On May 30, 2006, SWS amended Calaway's Form U5 to disclose the receipt of a customer complaint against Calaway.

2. Article V, Section 4(a)(i) of FINRA's By-Laws provides for a two-year period of retained jurisdiction over formerly registered persons. Accordingly, although Calaway is not currently associated with a FINRA member firm, based on the Form U5 amendment date, he remains subject to the jurisdiction of FINRA through May 29, 2008.

FIRST CAUSE OF ACTION

(Discretionary Trading (Rules 2510(b) and 2110))

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

4. During the period from January 2005 to April 2005, Calaway exercised discretionary authority in the securities account of public customer JM, without receiving prior written authorization from either JM or his employer member firm, SWS.

5. JM opened a brokerage account at SWS in January 2004. Calaway served as representative on the account.

6. In approximately January 2005, JM gave Calaway verbal discretionary authority to trade options in his account. Such authority was never reduced to writing.

7. During the period from January 2005 to April 2005, Calaway exercised discretionary authority in JM's account by executing transactions, as described on Exhibit A, attached hereto and incorporated by reference, that were not pre-approved by JM.

8. The transactions resulted in a loss of approximately \$65,000 in JM's securities account.
9. SWS never accepted JM's account as discretionary in writing or otherwise.
10. SWS did not permit discretionary accounts during the time of the transactions in JM's securities account.
11. Such acts, practice and conduct constitute distinct violations of NASD Conduct Rules 2110 and 2510(b) by Timothy Tyrone Calaway.

SECOND CAUSE OF ACTION
(Failure to Completely Respond (Rule 8210))

12. The Department realleges and incorporates by reference paragraphs 1-11 above.
13. In response to written requests, sent to Calaway pursuant to NASD Procedural Rule 8210, from FINRA staff for information regarding the allegations described in the First Cause of Action, Calaway hand-delivered a letter (which did not contain his current address or telephone number) to FINRA's Dallas District Office on October 6, 2006. His response, however, was incomplete, in that it did not fully respond to all questions.
14. FINRA staff sent follow-up Rule 8210 request letters to Calaway seeking a more complete response to the previously requested information. Specifically, the staff requested information regarding whether Calaway was the broker of record for all of the transactions in JM's account; whether discretion had been exercised in JM's account and, if so, the number and/or percentage of discretionary trades and the timeframe during which discretion was exercised.

15. By letter dated October 11, 2006, FINRA staff requested, pursuant to Procedural Rule 8210, that Calaway completely respond by providing the above-described additional information. The October 11th letter was sent, via regular and certified mail, to Calaway at his last known CRD residential address: [REDACTED] ("CRD address"), and three secondary addresses that FINRA staff received in connection with a computerized search regarding Calaway: [REDACTED] ("Preston Road Address"); [REDACTED] ("Elm Lane Address"); and [REDACTED] ("Adleta Blvd. Address").

16. The letter sent via regular mail to Calaway's CRD address was not returned. On November 17, 2006, the letter sent via certified mail to the CRD address was returned to the district office marked "Return to Sender," "Unclaimed," and "Unable to Forward."

17. The October 11th letter sent via regular mail to Calaway at the Preston Road Address was not returned. On November 14, 2006, the letter sent via certified mail was returned to the district office marked "Return to Sender" and "Unclaimed."

18. The October 11th letter sent via regular mail to Calaway at the Elm Lane Address was returned to the district office on October 16, 2006, marked "Return to Sender," "Not Deliverable as Addressed," and "Unable to Forward." On October 18, 2006, the letter sent via certified mail was returned to the district office, marked, "Return to Sender," "Not Deliverable As Addressed," and "Unable to Forward."

19. The October 11th letter sent via regular mail to Calaway at the Adleta Blvd. Address was returned to the district office on October 20, 2006, marked "Return to Sender," "Insufficient Address," and "Unable to Forward." On October 23, 2006, the letter sent via

certified mail was returned to the district office marked "Return to Sender" and "Insufficient Address."

20. By letter dated November 13, 2006, FINRA staff made its final request, pursuant to Procedural Rule 8210, for Calaway to provide the previously requested information. The November 13th letter was sent, via regular and certified mail, to Calaway at his CRD address and the three secondary addresses. The letter sent via regular mail to the CRD address was not returned. On January 3, 2007, the letter sent via certified mail to the CRD address was returned to the district office marked "Return to Sender," "Unclaimed," and "Unable to Forward."

21. The November 13th letter sent via regular mail to Calaway at the Preston Road Address was not returned to the district office. On January 16, 2007, the letter sent via certified mail was returned to the district office marked "Return to Sender," "Unclaimed," and "Unable to Forward."

22. The November 13th letter sent via regular mail to Calaway at the Elm Lane Address was returned to the district office on November 21, 2006, marked "Return to Sender," "Not Deliverable as Addressed," and "Unable to Forward." On November 21, 2006, the letter sent via certified mail was returned to the district office marked "Return to Sender," "Not Deliverable as Addressed," and "Unable to Forward."

23. The November 13th letter sent via regular mail to Calaway at the Adleta Blvd. Address was returned to the district office on November 29 2006, marked "Return to Sender," "Insufficient Address," and "Unable to Forward." On November 21, 2006, the letter sent via certified mail was returned to the district office marked "Return to Sender," "Insufficient Address," and "Unable to Forward."

24. To date, Calaway has failed to completely respond to FINRA's requests for information.

25. Such acts, practice and conduct constitute distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Timothy Tyrone Calaway.

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) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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: December 11, 2007


Karen E. Whitaker, Regional Counsel
Andrew A. Favret, Associate Vice President
and Regional Chief Counsel
FINRA Department of Enforcement
12801 North Central Expressway, Suite 1050
Dallas, TX 75243
Phone: 972-716-7610; Fax: 972-716-7612
E-mail: Karen.Whitaker@finra.org and
Judy.Peters@finra.org (legal assistant)

Of Counsel

Rory C. Flynn
Vice President & Chief Litigation Counsel
FINRA Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
202-974-2974; Fax: 202-721-8318

Mark P. Dauer
Deputy Chief Litigation Counsel – Regions
FINRA Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
504-522-6527; Fax: 504-522-4077