

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

Department of Market Regulation,
Complainant,

v.

James R. Kelly,
CRD No. 1323155,

Respondent.

Disciplinary Proceeding
No. 2006005457801

Hearing Officer AWH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 17, 2008

INTRODUCTION

Disciplinary Proceeding No. 2006005457801 was filed on November 26, 2007, by the Department of Market Regulation of FINRA ("Complainant"). Respondent James R. Kelly submitted an Offer of Settlement ("Offer") to Complainant on December 24, 2007. Pursuant to Code of Procedure 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 Code of Procedure 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 findings and violations consistent with the allegations of the

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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

Kelly, age 46, has been registered with NASD since November 1984. According to CRD, Kelly has been with ten different member firms: Blinder, Robinson & Co., Inc. (November 1984 to April 1987); Morgan Gladstone & Co., Inc. (April 1987 to July 1987); Graystone Nash, Inc. (May 1987 to July 1988); Investors Center, Inc. (June 1988 to November 1989); Donald & Co. Securities, Inc. (January 1991 to October 1991); Palm State Equities, Inc. (October 1993 to February 1995); Schonfeld Securities, Inc. (February 1995 to August 1997); Sunstate Equity Trading, Inc. (June 1997 to September 2006); Electronic Access Direct, Inc. (June 2005 to April 2007); and Park Financial Group, Inc. (May 2007 to July 2007). On December 18, 2007, a Form U-4 was filed seeking to register Kelly with Park Financial Group, Inc. as a General Securities Representative. Kelly's registration status, however, is listed as "deficient." Kelly remains subject to the jurisdiction of FINRA.

Kelly founded Sunstate Equity Trading (CRD No. 43571) in approximately 1997. At all relevant times, Kelly was the Owner/Chairman of Sunstate. Kelly was registered as a Financial Operations Principal, a General Securities Principal, and a General Securities Representative with Sunstate. Sunstate was expelled from NASD in September 2006 for failing to pay fines and/or costs.

Kelly's Central Registration Depository ("CRD") records list the following disciplinary action:

- A December 2003 matter in which Sunstate, Kelly, and one other principal, were censured and fined \$5,000, jointly and severally, for violations of NASD Conduct Rules 2110 and 3010 in connection with an OATS review.

FINDINGS AND CONCLUSIONS

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

Failure to Provide Complete and Timely Responses

During the period October 1, 2003 through September 30, 2004, Sunstate conducted business using the following two Market Participant Identifiers ("MPID"): JIMK and SUNE.

On June 3, 2005, FINRA staff sent a letter to Kelly requesting, pursuant to NASD Procedural Rule 8210, information relating to JIMK's compliance with the OATS rules.

The June 3rd letter was sent via U.S. certified mail to Kelly, Chairman, at Sunstate's address as reflected in CRD. The June 3rd letter requested a response by no later than June 24, 2005. Kelly did not respond by June 24, 2005, as requested.

On August 29, 2005, FINRA staff sent a letter to Kelly requesting, pursuant to Procedural Rule 8210, that Kelly "promptly forward the [JIMK] information identified in the June 3, 2005 letter." The August 29th letter was sent via facsimile and U.S. certified mail to Kelly, Chairman/Owner, at Sunstate's address as reflected in CRD. Kelly did not forward the requested information.

On September 28, 2005, FINRA staff sent a letter to Kelly requesting, pursuant to Procedural Rule 8210, the information identified in the June 3rd and August 29th letters. The September 28th letter specified, "the complete [JIMK] information should be provided immediately as it is already substantially overdue." The September 28th letter

was sent via facsimile and U.S. certified mail to Kelly, Chairman/Owner, at Sunstate's address as reflected in CRD. Kelly did not provide the information.

In light of Kelly's failure to respond to FINRA's repeated requests for written information pursuant to Procedural Rule 8210, the staff scheduled an on-the-record interview with Kelly for July 28, 2006. On or about July 27, 2006, counsel for Kelly and BK, Kelly's successor at Sunstate, provided copies of two purported responses to the staff's requests. The purported responses did not constitute complete and accurate responses by Kelly to the staff's repeated requests for information regarding JIMK. Nor did the purported responses constitute timely responses by Kelly to FINRA's repeated requests.

On June 6, 2005, FINRA staff sent a letter to Kelly requesting, pursuant to Procedural Rule 8210, information relating to SUNE's compliance with the OATS rules. The June 6th letter was sent via U.S. certified mail to Kelly, Chairman/Owner, at Sunstate's address as reflected in CRD. The June 6th letter requested a response by no later than June 27, 2005. Kelly did not respond by June 27, 2005, as requested.

On August 29, 2005, FINRA staff sent a letter to Kelly requesting, pursuant to Procedural Rule 8210, that Kelly "promptly forward the [SUNE] information identified in the June 6, 2005 letter." The August 29th letter was sent via facsimile and U.S. certified mail to Kelly, Chairman/Owner, at Sunstate's address as reflected in CRD. Kelly did not forward the requested information.

On September 28, 2005, FINRA staff sent a letter to Kelly requesting, pursuant to Procedural Rule 8210, the information identified in the June 6th and August 29th letters. The September 28th letter specified, "the complete [SUNE] information should be

provided immediately as it is already substantially overdue.” The September 28th letter was sent via facsimile and U.S. certified mail to Kelly, Chairman/Owner, at Sunstate’s address as reflected in CRD. Kelly did not provide the information.

In light of Kelly’s failure to respond to FINRA’s repeated requests for written information pursuant to Procedural Rule 8210, the staff scheduled an on-the-record interview with Kelly for July 28, 2006. On or about July 27, 2006, counsel for Kelly and BK, Kelly’s successor at Sunstate, provided copies of two purported responses to the staff’s requests. The purported responses did not constitute complete and accurate responses by Kelly to the staff’s repeated requests for information regarding SUNE. Nor did the purported responses constitute timely responses by Kelly to FINRA’s repeated requests.

By reason of the foregoing conduct, Kelly violated NASD Procedural Rule 8210 and Conduct Rule 2110.

Failure to Amend Form U-4

On November 7, 2006, FINRA sent Kelly’s counsel written correspondence advising that the staff made a preliminary determination to recommend that disciplinary action be brought against Kelly for violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The November 7th correspondence advised, “Please treat this letter as written notification that you are the subject of an investigation for purposes of triggering an obligation on your part to update your Form U-4 (Uniform Application for Securities Industry Registration or Transfer).” Pursuant to Article 5, Section 2(c) of FINRA’s By-Laws, Kelly was required to amend his Form U-4 not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

Kelly willfully failed to promptly amend his Form U-4 to reflect that he was the subject of an investigation. Specifically, Kelly failed to answer "Yes" to Question 14G(2), which states, "Have you been notified, in writing, that you are now the subject of any investigation that could result in a 'yes' answer to any part of 14A, B, C, D, or E?" Kelly did not submit an amendment to his Form U-4 within 30 days after learning that he was the subject of an investigation. Kelly did not update his Form U-4 to reflect that he was the subject of an investigation until on or about December 18, 2007.

By reason of the foregoing conduct, Kelly violated NASD Conduct Rule 2110 and IM-1000-1.

Denial of Findings of Prior Letter of Acceptance, Waiver and Consent

On December 23, 2003, an AWC became final in which Kelly and another individual were censured and fined a total of \$5,000, jointly and severally, for failing to enforce Sunstate's supervisory system with respect to OATS. Section 3(d) on Page 2 of the AWC specified, "Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis."

On or about October 26, 2004, Kelly filed an amendment to his Form U-4 that included an optional comment with respect to the December 23, 2003 AWC that, in part, stated:

I never had any OATS interaction and should not have been responsible for the OATS problem. Technically I was listed but should not have been. I was advised by my attorney to accept the fine and did so. It is my intention to appeal the decision and have brought it th (sic) the NASD Small Firm Advisory Board and have made them aware of my situation. When initially I accepted the AWC, I felt I was mislead by the examiner

as to his intent during his investigation and was not even aware that we had a late reporting issue. In essence I was mis titled (sic) and held responsible for a oversite (sic) that I had nor should not have had any involvement in.

Kelly's comment with respect to the December 23, 2003 AWC constitutes a public statement denying, directly or indirectly, an allegation in the AWC and created the impression that the AWC was without factual basis. Kelly subsequently removed the optional comment in connection with the Form U-4 filed on or about December 18, 2007.

By reason of the foregoing conduct, Kelly violated NASD Conduct Rule 2110.

Based on 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: (i) fined \$10,000; and (ii) suspended from association with any member firm in all capacities for a period of eight (8) months.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



Thomas R. Gira
Executive Vice President
Department of Market Regulation