

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NICOLE Y. ALLEN
(CRD No. 3075257),

Respondent.

Disciplinary Proceeding
No. 2006005891201

DEFAULT DECISION

Hearing Officer – SW

Dated: February 20, 2008

Respondent: (1) failed to respond to FINRA requests for information, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210; and (2) engaged in a private securities transaction, in violation of NASD Conduct Rules 3040 and 2110. Respondent is barred for violating NASD Conduct Rule 2110 and Procedural Rule 8210. In light of the bar, the Hearing Officer did not impose a separate sanction for the private securities violation.

Appearances

William Brice La Hue, Esq., Regional Counsel, Atlanta, GA, for the Department of Enforcement.

No appearance by or for Nicole Yvette Allen.

DECISION

I. Procedural Background

On September 28, 2007, the FINRA Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Nicole Yvette Allen ("Respondent"), alleging that Respondent: (i) participated in the sale of securities (i.e., the sale of a promissory note) without providing prior written notice to her employer, Ameriprise Financial Services, Inc. ("Ameriprise"), in violation of NASD Conduct Rules

3040 and 2110; and (ii) failed to respond to two requests for information issued by FINRA staff pursuant to Procedural Rule 8210, in violation of Rules 8210 and 2110.

On December 21, 2007, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the affidavit of William Brice La Hue, Esq., Regional Counsel in FINRA's Atlanta, GA office, and by four exhibits.¹ For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On September 28, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent, via first class and certified mail, at her address of record in FINRA's Central Registration Depository ("CRD address").² (AFF at ¶ 7). Enforcement received an illegible signed receipt for the September 28 certified mailing, indicating delivery on October 9, 2007. (CX-3). Respondent did not file an answer to the Complaint. (AFF at ¶ 8).

Thereafter, on October 29, 2007, Enforcement sent a Second Notice of Complaint and Complaint, via first class and certified mail, to Respondent at her CRD address. (AFF at ¶ 8). Enforcement received an illegible signed receipt for the October 29 certified mailing, indicating delivery on November 5, 2007. (CX-4). To date, Respondent has not filed an answer to the Complaint. (AFF at ¶ 10).

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the La Hue Affidavit will be designated as "AFF at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-2, p. 1).

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address.³ Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.⁴

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

From July 6, 1998 to July 19, 2006, Respondent was registered with Ameriprise as a general securities representative. (CX-2, p. 3). In the Form U-5 that it filed on behalf of Respondent, Ameriprise disclosed that it had discharged Respondent for violating company policies. (CX-1, pp. 1-2). Respondent is not currently associated with any FINRA member firm. (CX-2, p. 3).

Nevertheless, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after Respondent's registration with Ameriprise was terminated, and (2) the Complaint charges her with misconduct while she was associated with a FINRA member, and with failures to respond to requests for information issued pursuant to Rule 8210 during the period of retained jurisdiction.

³ See *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when the complaint was mailed to respondent's CRD address).

⁴ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to NASD Rules 9215(f) and 9269, and *NASD Notice to Members* 99-77.

B. Respondent Participated in the Offer and Sale of a Promissory Note to Customer RLS without Providing Prior Written Notice to Ameriprise

Count one of the Complaint alleges that in January 2006, while associated with Ameriprise, Respondent participated in the sale of a \$28,200 promissory note to customer RLS without providing prior written notice of the proposed transaction to Ameriprise. (Complaint at ¶¶ 4-10). Specifically, Respondent recommended that customer RLS invest in a one-year real estate investment that would pay 25% interest, and provided RLS with a promissory note issued by Citiwealth, LLC ("Citiwealth") in exchange for a check for \$28,200 from customer RLS for the investment. (Complaint at ¶¶ 5-6). The Citiwealth promissory note listed Respondent as an agent for Citiwealth. (Complaint at ¶ 6).

Respondent advised customer RLS that he would receive interest in four quarterly payments beginning April 2006. (Complaint at ¶ 5). In June 2006, Respondent submitted a check in the amount of \$1,762.50 to customer RLS representing the first quarterly interest payment. (Complaint at ¶ 9). Respondent also told customer RLS that she had submitted a redemption request to Citiwealth per RLS's request. (*Id.*).

Customer RLS has not received any additional interest payments, nor has he received the return of his principal. (Complaint at ¶ 10). In June 2006, in response to an inquiry by customer RLS, Respondent contacted Ameriprise and admitted that she had engaged in an unapproved real estate business. (Complaint at ¶ 8).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of count one of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

The Supreme Court devised the “family resemblance” test in *Reves v. Ernst & Young*,⁵ for determining whether a particular promissory note is a “security” for purposes of federal securities laws and regulations. Under the family resemblance test, all promissory notes are presumed to be securities, and this presumption is rebutted only by a showing that the investments bear a strong resemblance to a list of financial instruments specifically excluded as securities by the Supreme Court in *Reves*, or by proving, under a four-factor test, that the note is of a type that should be added to the list of excluded financial instruments.⁶ There was no evidence presented to rebut the presumption that the Citiwealth promissory note was a security.⁷

Accordingly, the Hearing Officer finds that, for purposes of this Default Decision, the evidence is sufficient to establish that the Citiwealth promissory note was a security.

NASD Conduct Rule 3040 requires that an associated person who intends to participate in a private securities transaction, prior to the transaction, must “provide written notice to the member with which he is associated describing in detail the proposed transaction and the person’s proposed role therein and stating whether he has received or

⁵ 494 U.S. 56, 62-63 (1990).

⁶ The four factors considered in *Reves* for whether a note should be added to the list of statutorily exempt notes are: (1) the motivations that would prompt a reasonable borrower and lender to enter into the transaction; (2) the plan of distributing the notes; (3) the reasonable expectations of the investing public regarding whether the instruments were securities; and (4) the presence of any alternative scheme of regulation or other factor that significantly reduces the risk of the instrument so as to make regulation under the securities laws unnecessary. *Reves*, 494 U.S. at 66-67.

⁷ A note may still be excluded from the coverage of the federal securities laws and regulations if it is of a certain type and “has a maturity at the time of issuance of not exceeding nine months.” 15 U.S.C. § 77c(a)(3). This exception was meant to apply to “prime quality negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper used to facilitate well recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks.” *Zeller v. Bogue Elec. Mfg. Corp.*, 476 F.2d 795, 799 (2nd Cir. 1973).

may receive selling compensation in connection with the transaction”⁸

Respondent’s solicitation of customer RLS to invest in the Citiwealth promissory note was sufficient to trigger the requirement that she notify Ameriprise of her participation in writing. A failure to provide prior written notice of an intent to participate in the solicitation of securities constitutes a violation of Conduct Rule 3040.⁹ A violation of Conduct Rule 3040 is also a violation of Conduct Rule 2110’s requirement to “observe high standards of commercial honor and just and equitable principles of trade.”¹⁰

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent participated in the sale of a promissory note to customer RLS, without providing prior written notice of the transaction to Ameriprise, in violation of NASD Conduct Rules 3040 and 2110, as alleged in count one of the Complaint.

C. Respondent Failed to Respond to Requests for Information

On July 20, 2006, the Atlanta, GA District office of FINRA initiated an investigation into the allegations of the Form U-5 filed by Ameriprise on behalf of Respondent. (Complaint at ¶ 13). Count two of the Complaint alleges that the FINRA staff sent Respondent two requests for information, pursuant to NASD Procedural Rule 8210, on August 18, 2006 and September 12, 2006, concerning the allegations of count one of the Complaint. (Complaint at ¶¶ 14-17). The requests for information were sent to

⁸ In addition, Rule 3040 provides that, if the transaction is for compensation, the member firm must approve or disapprove of the proposed transaction in writing. If the member approves a person’s participation in the proposed transaction, the transaction must be recorded on the books and records of the member and the member must supervise the person’s participation in the transaction.

⁹ *Stephen J. Gluckman*, 1999 SEC LEXIS 1395, at **14-15 (July 20, 1999).

¹⁰ *District Bus. Conduct Comm. v. Norman M. Merz*, No. C8A960094, 1998 NASD Discip. LEXIS 40 (NAC Nov. 11, 1998).

Respondent at her CRD address. (*Id.*). To date, Respondent has not responded to either of the Rule 8210 requests. (Complaint at ¶¶ 15, 17).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of count two of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.¹¹

The Hearing Officer finds that Respondent had constructive notice of the Rule 8210 requests because they were mailed to her CRD address, and finds further that she violated NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to the two requests for information, as alleged in count two of the Complaint.

IV. Sanctions

A. Respondent Failed to Respond to FINRA Requests for Information

For failing to respond to the FINRA staff's requests for information, Enforcement recommended that Respondent be barred. The FINRA Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹² The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent from associating

¹¹ See, e.g., *Richard J. Rouse*, Exch. Act Release No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exch. Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹² *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

with any member firm in any capacity for failing to respond to the two requests for information issued pursuant to NASD Procedural Rule 8210.

B. No Sanction for the Private Securities Violation

Because the Hearing Officer barred Respondent for her failure to respond to the Rule 8210 requests for information, no separate sanction will be imposed for the private securities transaction in violation of NASD Conduct Rules 3040 and 2110.¹³

V. Order

Respondent Nicole Yvette Allen is barred from associating with any FINRA member firm in any capacity for failing to respond to FINRA requests for information issued pursuant to Rule 8210, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bar shall become effective on the date this Decision becomes the final disciplinary action of FINRA.


Sharon Witherspoon
Hearing Officer

Date: Washington, DC
February 20, 2008

Copies to:

Nicole Y. Allen (via FedEx and first class mail)
William B. 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)

¹³ See *Dep't of Enforcement v. Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002) (explaining that a bar is the standard sanction for a respondent's failure to respond to information requests and holding that it is therefore redundant to impose an additional sanction, such as a suspension, for a violation of another FINRA rule).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NICOLE YVETTE ALLEN,
(CRD No. 3075257)

Respondent.

Disciplinary Proceeding
No. 2006005891201

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT

1. Nicole Yvette Allen ("Allen") was registered as a general securities representative with FINRA member Ameriprise Financial Services, Inc. ("Ameriprise") from July 1998 until July 2006. Allen is not currently employed by an FINRA member. FINRA retains jurisdiction over Allen pursuant to Article V, Section 4 of FINRA Bylaws.

SUMMARY

2. In January 2006, Allen participated in at least one private securities transaction involving a customer, without providing prior written notice to Ameriprise, her employer member firm. In addition, Allen failed to respond to requests, issued pursuant to NASD Procedural Rule 8210, for information made by FINRA staff in connection with its investigation of her participation in the subject private securities transaction.

FIRST CAUSE OF ACTION

NASD CONDUCT RULES 2110 AND 3040

(Allen Participated In A Private Securities Transaction)

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

4. In or about January 2006, Allen participated in at least one private securities transaction, involving customer R.L.S., without providing prior written notice to, or receiving approval from, Ameriprise, the member firm with which Allen was registered.
5. Specifically, in January 2006, Allen recommended to customer R.L.S. that he invest in a one-year real estate investment that would pay 25% interest. Allen told customer R.L.S. that he would receive interest in four quarterly payments beginning on April 1, 2006.
6. Customer R.L.S. agreed to the investment as recommended by Allen and gave Allen a check in the amount of \$28,200. Allen then provided R.L.S. with a promissory note issued by Citiwealth, LLC. ("Citiwealth"). The promissory note issued to R.L.S. listed Allen as an agent for Citiwealth.
7. The promissory note sold to R.L.S. was a security for purposes of NASD Conduct Rule 3040.
8. In June 2006, in response to an inquiry by R.L.S., Allen contacted Ameriprise and admitted that she had engaged in unapproved real estate business.
9. Also in June 2006, Allen obtained and submitted to R.L.S. a check in the amount of \$1,762.50, representing the first quarterly interest payment. Allen further indicated to R.L.S. that she had submitted his redemption request to Citiwealth, as he requested.
10. R.L.S. has not received the return of his principal nor any additional interest payments from Citiwealth or any other party.
11. Such acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 3040 by Respondent Allen.

SECOND CAUSE OF ACTION

NASD CONDUCT RULE 2110 AND PROCEDURAL RULE 8210

(Failure to Respond to FINRA Request for Information)

12. The Department realleges and incorporates by reference paragraphs 1 through 11, above.

13. On or about July 20, 2006, the FINRA Atlanta District office initiated an investigation into the allegations on a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Ameriprise regarding Allen.
14. By letter dated August 18, 2006, sent via first class mail to Allen at her CRD address in Dallas, Texas, Allen was requested, pursuant to NASD Procedural Rule 8210, to submit a detailed, signed written statement no later than September 8, 2006.
15. The August 18, 2006, letter sent by first class mail was not returned. Allen failed to respond by the September 8, 2006, deadline.
16. By letter dated September 12, 2006, a second letter was sent via first class and certified mail to Allen at her CRD address. Allen was requested, once again, to submit a detailed, signed written statement, pursuant to NASD Procedural Rule 8210, this time by September 26, 2006.
17. The September 12, 2006, letter sent by first class mail was not returned, but the letter sent by certified mail was returned indicating that it was "unclaimed." Allen failed to respond by the September 26, 2006, deadline.
18. Such acts, practices and conduct described above constitute separate and distinct violations of NASD Procedural Rule 8210 and Conduct Rule 2110 by Respondent Allen.

RELIEF REQUESTED

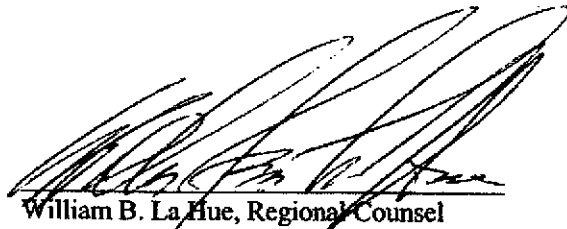
WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD 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 NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

9/25/07



William B. La Hue, Regional Counsel
FINRA Department of Enforcement
FINRA Atlanta District Office
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, GA 30305
(404) 239-6111
Fax No. (404) 264-1586

Andrew A. Favret, Assoc. VP/Regional Chief
Counsel
FINRA Department of Enforcement
FINRA New Orleans District Office
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
(504) 522-6527; Fax: (504) 522-4077

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