

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

JAMES RICHARD WILLARD, III
(CRD No. 1212281),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2006006046401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On or about April 19, 2006, Respondent James Richard Willard, III made unsuitable recommendations to an elderly customer. In order to avoid age-related heightened scrutiny by his firm's compliance department of these unsuitable recommendations, Willard created false documents and, as a result, caused First Investors Corporation's books and records to contain false and misleading information regarding the age of the customer. This conduct violated NASD Conduct Rules 2310, 3110 and 2110 and IM-2310-2.

2. After being terminated from First Investors for this misconduct, Willard willfully reported false information on Forms U4 filed at his next two employers, Cadaret, Grant & Co., Inc. and NFP Securities Inc., regarding the cause of his termination from First Investors. This conduct violated NASD Conduct Rule 2110 and IM-1000-1.

3. Willard also willfully failed to disclose on Forms U4 filed at Cadaret Grant and NFP that he was the subject of an FINRA investigation. This conduct violated NASD Conduct Rule 2110 and IM-1000-1.

RESPONDENT AND JURISDICTION

4. From November 7, 1983 to August 2, 2006, Willard was registered with FINRA (f/k/a National Association of Securities Dealers or NASD) through member firm First Investors as an Investment Company and Variable Contracts Products Representative. On April 30, 1998, Willard also became registered as a General Securities Representative through First Investors.

5. From September 21, 2006 to December 7, 2007, Willard was registered in those capacities through member firm Cadaret Grant.

6. Since December 7, 2007, Willard has been registered through member firm NFP. The misconduct alleged herein occurred while Willard was associated with a member firm. Moreover, he is currently associated with NFP. Willard is therefore subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION Unsuitable Investment Recommendations (NASD Conduct Rules 3110 and 2110 and IM-2310-2)

7. The Department realleges and incorporates by reference paragraphs 1-6 above.

8. In or about 1994, Willard became the representative for customer RM's account at First Investors. At that time, RM was a 75-year-old widow with modest assets and virtually no investment experience. RM's investment objective was "safety with principal" with the following investment profile: 75% conservative and 25% moderate. In or about April 2006, RM, then 86 years old, was seeking monthly income. Moreover, RM was experiencing financial difficulties and had insufficient money to pay for her living expenses. RM had an annual income

of approximately \$25,000 and relied upon her investments to provide additional monthly income. As such, RM was risk averse with respect to her investments.

9. On or about April 19, 2006, Willard recommended that RM liquidate certain securities held in an account at another member firm, including a variable annuity, fixed income securities, mutual funds and preferred stock and purchase Class A shares of three First Investors' mutual funds with growth investment strategies. The related mutual funds' prospectuses indicated that such funds may be appropriate for individuals with "long-term investment horizon[s] and [who] are able to ride out market cycles."

10. Willard made these recommendations without having a reasonable basis for believing that such recommendations were suitable based upon RM's age, investment objectives, risk tolerance, financial situation and needs. Had all of Willard's recommendations been implemented, RM would have incurred \$6,206.82 in unnecessary sales charges and Willard would have earned \$4,133.63 in commissions.¹

11. By recommending unsuitable transactions, Willard violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

**SECOND CAUSE OF ACTION
Falsified Records
(NASD Conduct Rules 3110 and 2110)**

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

13. In 2003, First Investors implemented internal policies requiring heightened supervisory review of transactions involving customers, such as RM, who were over age 70.

¹ The mutual fund transactions were subsequently reversed and Willard was charged back for commissions earned. The variable annuity transaction was not entered after First Investors' management discovered the inconsistency in RM's date of birth.

Among other requirements, a "Special Review Checklist For Client Age 70 and Over" had to be prepared, and certain transactions had to be pre-approved by the firm's Compliance Department.

14. In or about April 2006 through May 2006, in connection with the unsuitable transactions alleged above, Willard falsified customer RM's birth date on at least seven documents, including an account application, transfer and customer profile forms and other firm records. Willard used a date that indicated that customer RM was 20 years younger than her actual age, which was then 86, and thereby allowed Willard to avoid First Investors' heightened supervisory scrutiny of the transactions. Willard's actions caused First Investors' books and records to contain false and misleading information regarding the age of customer RM.

15. By falsifying firm records, Willard violated NASD Conduct Rules 3110 and 2110.

**THIRD CAUSE OF ACTION
Willfully Reporting False Information on Forms U4
(NASD Conduct Rule 2110 and IM-1000-1)**

16. The Department realleges and incorporates by reference paragraphs 1-15 above.

17. Following an internal investigation by First Investors compliance personnel into the above unsuitable transactions and falsification of records, Willard left the firm on or about August 2, 2006. He then joined Cadaret Grant and filed a Form U4 through that firm on September 21, 2006. After leaving Cadaret Grant, Willard joined NFP, filing a Form U4 through that firm on December 7, 2007.

18. In connection with each of those U4 filings, Willard completed a Disclosure Reporting Page (DRP) wherein he disclosed that he had been discharged from First Investors for "misrepresenting the age of an elderly [First Investors] client as being 67 when she was in fact 87 [sic] in seeking approval for certain securities transactions."

19. The DRPs included a section wherein Willard could provide an optional comment “to provide a brief summary of the circumstances leading to the termination.”

20. Willard willfully entered the following material information on the subject DRPs in the optional comment section: “I made an error listing the client’s [date of birth], realized the error, immediately corrected the [date of birth] and notified my manager of the error.”

21. Willard’s claim that he self-reported his misconduct is false. Moreover, Willard did not make an error regarding the client’s date of birth — he admitted to First Investors that he intentionally entered the wrong date of birth on the subject forms.

22. By entering false information on Forms U4, Willard violated NASD Conduct Rule 2110 and IM-1000-1.

FOURTH CAUSE OF ACTION
Willful Failure to Report Material Information on Forms U4
(NASD Conduct Rule 2110 and IM-1000-1)

23. The Department realleges and incorporates by reference paragraphs 1-22 above.

24. On April 13, 2007, FINRA staff sent a “Wells” notice to Willard notifying him that he was the subject of an investigation. Specifically, the letter noted that the Department intended to recommend that a complaint be filed against Willard for falsifying documents. The letter noted that Willard was obligated to update his Form U4 to disclose the investigation.

25. Willard, however, willfully failed to amend his Cadaret Grant Form U4 to reflect this material fact.

26. On December 7, 2007, Willard filed a Form U4 at member firm NFP. The Form U4 included a question whether Willard was the subject of an investigation by a self-regulatory organization. Willard falsely answered “no” to this question, willfully failing to disclose the material fact that he was the subject of a FINRA investigation.

27. On December 31, 2007, FINRA staff sent an amended Wells notice to Willard notifying him that he was the subject of an investigation. Specifically, the letter noted that the Department intended to recommend that, in addition to the falsification charges identified in the April 13, 2007 Wells notice, a complaint be filed against Willard for unsuitable investment recommendations and Form U4 disclosure violations. This letter also noted that Willard was obligated to update his Form U4 to disclose the investigation.

28. On January 15, 2008, Willard finally filed an amended Form U4 disclosing the April 13, 2007 Wells notice but providing no detail concerning the nature of FINRA's investigation. To date, he has not disclosed the amended Wells.

29. By failing to disclose material information on Forms U4, Willard violated NASD Conduct Rule 2110 and IM-1000-1.

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), including monetary sanctions, be imposed;
- 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; and
- C. make specific findings that Respondent's conduct, as alleged in the Third and Fourth Causes of Action, was willful; the omitted information was material; and, the omission to state material facts was on Form U4 applications.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: June 6, 2008



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