

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

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Guy W. Gane, Jr.
CRD No. 703273,

Respondent.

Disciplinary Proceeding
No. 2006006147001

Hearing Officer – SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 13, 2009

INTRODUCTION

Disciplinary Proceeding No. 2006006147001 was filed on December 31, 2008, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Guy W. Gane, Jr. submitted an Offer of Settlement (Offer) to Complainant on March 23, 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

On October 20, 1984, Gane first became registered with FINRA as a General Securities Representative. From December 21, 2005 through May 12, 2006, Gane was registered in this capacity with AOS, Inc. From May 10, 2006, through April 3, 2007, Gane was registered with Wall and Company Securities, Inc. ("the firm"). While registered with those firms, Gane operated a branch office in Amherst, New York.

Gane has not been associated with a member firm since April 3, 2007, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of the FINRA By-Laws in that: the misconduct alleged in the First Cause of Action of the Complaint occurred while he was associated with a member firm; and the Complaint was filed within, and the violations of NASD Procedural Rule 8210 alleged in the Second Cause of Action of the Complaint occurred within, two years of his last association with a member firm.

FINDINGS AND CONCLUSIONS

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

OVERVIEW

1. Gane participated in private securities transactions involving the sale of approximately \$3.8 million of convertible debentures issued by affiliated entities he controlled, without providing prior written notice to, or obtaining prior

approval from, his employer member firms. Gane also failed to appear for an on-the-record interview (OTR) before FINRA staff.

**Selling Away
(NASD Conduct Rules 3040 and 2110)**

2. In 2006, AOS' Compliance Manual provided that:

prior to participating in any transaction, except mutual funds or variable annuity contracts, where such transaction occurs either at this firm or at another firm... the employee must provide written notice to the Compliance Officer, describing in detail the proposed transaction, his role therein, and whether he has or will receive any commission or other compensation in connection with the transaction.

This provision also required the employee to obtain written approval from the Compliance Officer prior to engaging in the transaction.
3. On or about February 16, 2006, Gane signed a "Private Securities Transaction Statement for AOS, Inc." in which he acknowledged that he read and understood AOS' policies and procedures regarding the disclosure to AOS of all private securities transactions. He further indicated in the Statement that he had not conducted any Private Securities Transactions during the past year.
4. In 2006 and 2007, the firm's Policies and Procedures Manual provided that: "All associated persons are prohibited from conducting private securities transactions except in accordance with the requirements of NASD Rule 3040." The Manual also defined the terms "Private Securities Transactions" and "Selling Compensation" and required that associated persons seek written notification for any proposed transaction and obtain written approval from the firm for the same.
5. From in or about December 2005 through in or about April 2007, Gane engaged in private securities transactions without providing prior written notice to, or

obtaining prior written approval from, his employer member firms. Specifically, Gane participated in the sale of approximately \$3.8 million of convertible debentures, which are securities, to approximately 60 investors in the Buffalo, New York area. Gane personally sold approximately \$1 million of the convertible debentures.

6. The convertible debentures were issued by Watermark Financial Services Group (Watermark Financial) and M-One Financial Services, LLC (M-One) for the benefit of Watermark Financial. Gane was the President and owner of both entities. Gane deposited the debenture offering proceeds in those companies' bank accounts, which he controlled.
7. The debentures promised investors a fixed 10% annual return and had one or two-year maturity periods, at which time Watermark Financial promised to repay investors their principal plus accrued interest. On or before the debenture's maturity date, purchasers also had the option to convert all or part of the face value of the debentures and accrued interest into shares of Watermark Financial common stock.

**Failure to Respond
(NASD Procedural Rule 8210 and NASD Conduct Rule 2110)**

8. On September 26, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Gane at his last known residential address reflected in the Central Registration Depository, [REDACTED] (CRD Address), requesting that he appear for an OTR before FINRA staff in Woodbridge, New Jersey on October 23, 2007. The letter was sent by first

class and certified mail. The Addendum attached to this letter warned Gane that if he did not appear for the OTR he could be subject to disciplinary action and that possible sanctions included a bar.

9. Following a request by Gane's counsel, the OTR was rescheduled to the mutually agreed upon date of November 6, 2007.
10. On October 12, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Gane at his CRD address requesting that he appear for an OTR before FINRA staff in Woodbridge, New Jersey on November 6, 2007. The letter was sent by first class and certified mail. On November 5, 2007, Gane's counsel informed FINRA staff by letter that Gane would not be available for the November 6 OTR. The OTR was subsequently rescheduled to the mutually agreed upon date of November 19, 2007.
11. On November 6, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Gane at his CRD address requesting that he appear for an OTR before FINRA staff in Woodbridge, New Jersey on November 19, 2007. The letter was sent by first-class and certified mail. The letter warned Gane that if he did not appear for the OTR he could be subject to disciplinary action.
12. On November 13, 2007, Gane's counsel contacted FINRA staff to advise that Gane was "considering" appearing for the OTR" and preferred "that the OTR take place in Buffalo, New York, where both Mr. Gane and I are located. Alternatively, we request that the OTR take place by telephone." In the letter,

counsel also requested an outline of the proposed OTR so that his client could "properly prepare."

13. On November 14, 2007, FINRA staff responded by letter to Gane's counsel reaffirming that Gane had to appear in New Jersey for his OTR. The letter further advised counsel that he would not be provided with an outline of the OTR questions.
14. On November 15, 2007, Gane's counsel sent a letter to FINRA staff stating that Gane would not appear for an OTR on November 19, 2007.
15. On November 20, 2007, FINRA staff spoke with Gane's counsel. By mutual agreement, Gane's OTR was rescheduled for December 18, 2007. FINRA staff also accommodated counsel's request that the OTR be conducted in Buffalo, New York.
16. On November 26, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Gane at his CRD address requesting that he appear for an OTR before FINRA staff on December 18, 2007 in Buffalo, New York. The letter was sent by first-class and certified mail. The letter warned Gane that if he did not appear for the OTR he could be subject to disciplinary action.
17. On December 13, 2007, Gane's counsel sent a letter confirming the OTR scheduled to take place in Buffalo, New York on December 18, 2007.
18. On December 14, 2007, Gane's counsel advised FINRA staff that Gane would not appear for the scheduled OTR. Counsel copied Gane on a letter sent to staff about his refusal to appear.

19. The staff is not aware of any more current residential or business addresses for Gane.

Based on the foregoing, Respondent violated NASD Conduct Rules 3040 and 2110 and NASD Procedural Rule 8210.

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 barred from association with any FINRA member in any capacity.

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

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

SO ORDERED.

FINRA

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



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