

FINANCIAL INDUSTRY REGULATORY AUTHORITY
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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

KENNETH STUART NIERENBERG,
CRD No. 1596132,

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2006006630101

HEARING OFFICER-LBB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

DATE: December 11, 2008

INTRODUCTION

Disciplinary Proceeding No. 2006006630101 was filed on August 26, 2008, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant).

Respondent Kenneth Stuart Nierenberg submitted an Offer of Settlement (Offer) to Complainant on December 3, 2008. Pursuant to NASD 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 NASD 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 Complaint, and to the imposition of

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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 December 17, 1986, Nierenberg first became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) as an Investment Company and Variable Contracts Products Representative through a former member firm.

On February 24, 1998, Nierenberg became registered in the same capacity through member firm M&T Securities, Inc. On August 25, 1998, he became registered as a General Securities Representative, and, on August 9, 2004, he became registered as an Investment Company and Variable Contracts Products Principal.

On October 19, 2006, M&T Securities filed a Form U5 on Nierenberg's behalf disclosing that he was discharged on September 22, 2006.

FINDINGS AND CONCLUSIONS

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

Conversion of Funds from Customer OT (NASD Conduct Rules 2330 and 2110)

From February 1998 to September 2006, Nierenberg was assigned to work in various M&T Bank (an affiliate of M&T Securities) retail banking locations in New York State, where he would service bank customers that had investment needs.

In or about April 2005, OT, then a 78-year-old widow, became Nierenberg's customer at M&T Securities.

On or about March 14, 2005, an insurance company informed OT that she would be receiving approximately \$16,835 in insurance proceeds as a result of her husband's death.

The \$16,835 was subsequently placed into a checking account at the insurance company in OT's name where it earned interest.

On or about May 27, 2005, a check in the amount of \$16,969.22 was written out of that account to OT.

OT intended that the \$16,969.22 be used for her benefit in an investment, insurance and/or banking transaction.

On or about June 2, 2005 and without OT's authorization or consent, Nierenberg deposited her \$16,969.22 into his personal M&T Securities account.

Without OT's authorization or consent, Nierenberg subsequently used her \$16,969.22 to pay for his personal expenses.

On or about August 19, 2005, Nierenberg filled out an M&T Bank triplicate debit ticket in the amount of \$26,000, to remove that amount from OT's M&T Bank account.

On or about August 19, 2005, the \$26,000 was debited from OT's M&T Bank account.

OT intended that the \$26,000 be used for her benefit in an investment, insurance and/or banking transaction.

On or about August 22, 2005 and without OT's authorization or consent, Nierenberg deposited her \$26,000 into his personal M&T securities account.

Without OT's authorization or consent, Nierenberg subsequently used her \$26,000 to pay for his personal expenses.

On or about September 21, 2005, Nierenberg debited \$10,000 from OT's account at M&T Bank, and used the funds to purchase an official bank check in that same amount. OT intended that the \$10,000 be used for her benefit in an investment, insurance and/or banking transaction.

On or about December 6, 2005 and without OT's authorization or consent, Nierenberg applied the \$10,000 bank check to insurance policies in the name of himself and his wife.

**Conversion of Funds from Customer AD
(NASD Conduct Rules 2330 and 2110)**

In or about September 2004, AD, then 70, became Nierenberg's customer at M&T Securities.

On or about April 22, 2005, an M&T Bank triplicate debit ticket in the amount of \$18,500 was filled out to remove those funds from AD's M&T Bank account.

On or about April 22, 2005, the \$18,500 was debited from AD's M&T Bank account.

AD intended that the \$18,500 be used for her benefit in an investment, insurance and/or banking transaction.

On or about April 26, 2005 and without AD's authorization or consent, Nierenberg deposited her \$18,500 into his personal M&T Securities account.

Without AD's authorization or consent, Nierenberg subsequently used her \$18,500 to pay for his personal expenses.

On or about May 16, 2005, an M&T Bank triplicate debit ticket in the amount of \$21,000 was filled out to remove those funds from AD's M&T Bank account.

On or about May 16, 2005, the \$21,000 was debited from AD's M&T Bank account.

AD intended that the \$21,000 be used for her benefit in an investment, insurance and/or banking transaction.

On or about May 18, 2005 and without AD's authorization or consent, Nierenberg deposited her \$21,000 in his personal M&T Securities account.

Without AD's authorization or consent, Nierenberg subsequently used her \$21,000 to pay for his personal expenses.

**Willful Failure to Disclose Material Information
On a Form U4
(NASD Conduct Rule 2110 and IM-1000-1)**

Pursuant to Article V, Section 2(c), of FINRA's By-Laws, the information provided on a Form U4 must be kept current by means of amendments not later than 30 days after the registered representative learns of "the facts or circumstances giving rise to the amendment."

On or about February 23, 1998, Nierenberg submitted or caused to be submitted to NASD an initial Form U4 through M&T Securities that included a question as to whether Nierenberg had any unsatisfied judgments or liens against him. Nierenberg answered "no" to this question.

On or about March 21, 2005, the IRS imposed a lien on Nierenberg due to unpaid federal taxes in the amount of \$19,670.79. That lien remained unsatisfied until May 17, 2006.

On or about December 6, 2005, the IRS imposed a lien on Nierenberg due to unpaid federal taxes in the amount of \$50,172.26. That lien remained unsatisfied until May 17, 2006.

The unsatisfied liens constituted material facts for purposes of question 14M on Nierenberg's Form U4.

From in or about April 2005 to in or about May 2006, Nierenberg willfully failed to amend his Form U4 at M&T Securities to disclose those material facts.

Based on the foregoing, Respondent violated NASD Conduct Rules 2330 and 2110 and IM-1001-1. As noted above, Respondent willfully failed to amend his Form U4 to disclose material facts.

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

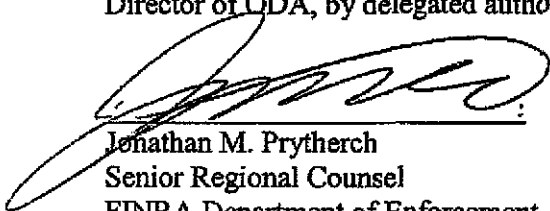
It is ordered that Respondent be barred from association with any member of FINRA in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to IM-8310-3(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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