

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**LEGARE M. JOHNSON
(CRD No. 1480395),**

Respondent.

**Disciplinary Proceeding
No. 2006007502601**

Hearing Officer – LBB

DEFAULT DECISION

August 21, 2008

Respondent is barred for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, the issue of whether Respondent violated Conduct Rules 3030 and 2110 by engaging in outside business activities is not addressed.

Appearances

Michael A. Gross, Principal Regional Counsel, FINRA, Boca Raton, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this proceeding on April 14, 2008, asserting two causes of action against Respondent Legare M. Johnson ("Respondent"). The first cause of action alleges that Respondent violated NASD Conduct Rules 3030 and 2110 by engaging in outside business activities without providing proper notice to his firm or receiving approval from the firm. The second cause of action alleges that Respondent failed to respond to Rule 8210 requests for information, thereby violating Procedural Rule 8210 and Conduct Rule 2110.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On July 3, 2008, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, to which Respondent did not respond. Accordingly, pursuant to NASD Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted. Enforcement's motion will be granted with respect to the second cause of action.¹ In light of the disposition of the second cause of action, the Hearing Officer does not decide the motion with respect to the first cause of action.

I. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on Respondent at his most current residential address as listed in the Central Registration Depository ("CRD") by first-class certified mail on April 18, 2008. The certified mailing was returned to the FINRA District Office marked "Unclaimed."

Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class regular and certified mail at his CRD address on May 19, 2008.² The second certified mailing was also returned to the District Office marked "Unclaimed." The Postal Service did not return the Complaint and Second Notice of Complaint that were sent by first-class mail to the District Office.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. Respondent has failed to respond to the Complaint. By failing to respond, he defaulted.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials filed by Enforcement with its motion.

² Enforcement does not have actual knowledge of any other addresses.

II. Jurisdiction

Respondent was associated with FINRA member firms from 1985 until December 2006, when his employment was terminated. The misconduct charged in the first cause of action occurred while Respondent was associated with FINRA member firms Metropolitan Life Insurance Company and Metropolitan Securities, Inc. (collectively, "MetLife"). Although Respondent has not been associated with any FINRA member since then, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his association with a member firm, and it charges him with misconduct while he was associated with member firms and with failing to respond to Rule 8210 requests issued within two years following the termination of his association with member firms.

III. Origin of the Investigation

The Department of Enforcement initiated this investigation as a result of MetLife filing a Form U5 on Respondent's behalf. The Form U5, filed on December 20, 2006, indicated that Respondent was terminated for engaging in outside business activity.

IV. Violations

A. Outside Business Activities

The first cause of action alleges that Respondent violated NASD Conduct Rules 3030 and 2110 by selling an equity-indexed annuity to customer ML, without providing notice to MetLife or receiving approval from MetLife. The Department of Enforcement has not addressed the issue of whether the particular equity-indexed annuity sold by Respondent was a security.

Furthermore, Enforcement declined to recommend sanctions for the alleged Rule 3030 violation because it recommended a bar for Respondent's failure to provide information in response to Rule 8210 requests.

Without more information about the equity-indexed security sold by Respondent, it is unclear it was a security. See *Indexed Annuities and Certain Other Insurance Contracts*, 73 Fed. Reg. 37752 at 37753 (proposed July 1, 2008) ("The status of indexed annuities under the federal securities laws has been uncertain since their introduction in the mid-1990s."); NTM 5-50 at page 3 (available at www.finra.org) ("The question of whether a particular [equity-indexed annuity] is an insurance product or a security is complicated and depends upon the particular facts and circumstances concerning the instrument offered or sold."). If it was a security, Respondent did not violate Rule 3030, although he might have violated Rule 3040. In an analogous situation, the National Adjudicatory Council dismissed a complaint charging a violation of Rule 3030 because the evidence failed to establish that the instrument that the respondent had sold without the approval of his firm was a security. *Dep't of Enforcement v. Strong*, No. E8A2003091501 (Aug. 13, 2008) (slip opinion available on FINRA website). The NAC noted that the dismissal of the complaint would not have been necessary if the complaint had charged the respondent with a violation of Rule 3030 as well as Rule 3040, pled in the alternative. *Id.* at 7.

In light of the imposition of a bar for Respondent's failure to provide information, as discussed below, and Enforcement's position on sanctions, the issue of whether there is an adequate basis in the record for a finding of a violation of Conduct Rule 3030 will not be addressed in this decision.

B. Failure to Respond to Requests for Information

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. By letters dated July 16, August 14, and September 11, 2007, FINRA staff sent Respondent requests for information pursuant to Rule 8210 to his CRD address, requesting information concerning his termination

and his outside business activities. All three letters were sent by first-class mail, and were not returned to the District Office. The August 14 and September 11 letters were also sent by certified mail. The certified mail receipt for the August 14 letter was signed by Karen T. Johnson and returned to the District Office. The September 11 letter sent by certified mail was returned to the District Office marked "Unclaimed." Because the requests were sent to his CRD address, Respondent is deemed to have received them.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. A violation of Rule 8210 is also a violation of Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

For failing to respond to requests for information, the Guidelines recommend a bar. *Sanction Guidelines* at 35. One of the Principal Considerations is the nature of the information requested. The information requested was important to determine whether Respondent violated FINRA rules by selling an equity-indexed annuity to customer ML or committed additional violations by engaging in similar activities without proper notice to or approval from his firm. There is no evidence of any mitigating facts that would support a lesser sanction.

A bar is appropriate for Respondent's failure to respond to requests for information in violation of Rules 8210 and 2110.

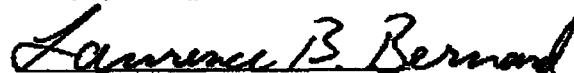
VI. Conclusion

Respondent is barred for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the imposition of a bar, the Hearing

Officer does not decide whether the equity-indexed annuity sold by Respondent without notifying his firm is a security, and therefore does not decide whether Respondent violated Conduct Rule 3030 by engaging in an outside business activity.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Legare M. Johnson (*via overnight courier and first-class mail*)
Michael A. Gross, Esq. (*via electronic and first-class mail*)
David B. Klafter, 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*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

vs.

Legare M. Johnson (CRD No. 1480395),

Respondent.

DISCIPLINARY PROCEEDING

No. : 2006007502601

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Legare M. Johnson engaged in business activity for compensation outside the scope of his business relationship with his employing member firms and without providing the firms with prompt written notice of the activity, in violation of NASD Conduct Rules 3030 and 2110. In addition, Johnson failed to respond to the staff's multiple requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

RESPONDENT

2. Johnson became registered with FINRA as a Limited Representative – Investment Company and Variable Contracts Products (Series 6) in July 1986.

3. From approximately August 6, 1985 through December 11, 2006, Johnson was associated with member firms Metropolitan Life Insurance Company and Metropolitan Securities Inc. (collectively, "MetLife").

4. On December 20, 2006, MetLife filed a Form U5 terminating Johnson's association with the firms as of December 11, 2006.

5. Johnson is not currently associated with a FINRA member firm, but he is still within the jurisdiction of FINRA pursuant to Article V, Section 4 of FINRA's By-Laws. Jurisdiction over Johnson expires on December 10, 2008, which is two years after he was last associated with a FINRA member firm.

FIRST CAUSE OF ACTION

Outside Business Activity

Violation of NASD Conduct Rules 3030 and 2110

6. The Department realleges and incorporates Paragraphs 1 through 5 by reference.

7. From at least 2003 through 2006, MetLife required its representatives to disclose their outside business activities. From at least the beginning of 2006, MetLife required its representatives to receive approval from the firm for the sale of all equity-indexed annuities.

8. In an April 11, 2005 letter, MetLife warned Johnson about selling an Allianz Life Insurance Company of North America ("Allianz") annuity without first receiving the appropriate approval from MetLife. At that time, Johnson claimed that he was unaware that the sale violated firm policy and agreed not to make such a sale again without first receiving the appropriate approval.

9. In November 2006, Johnson, while associated with MetLife, sold an Allianz equity-indexed annuity to customer ML and received a \$14,154.94 commission from the sale.

10. Johnson did not provide MetLife with notice of his sale of the Allianz equity-indexed annuity to customer ML; he did not receive MetLife's approval to make the sale; and the sale was outside the scope of his relationship with MetLife.

11. By engaging in the foregoing undisclosed outside business activity for compensation, Johnson violated NASD Conduct Rules 3030 and 2110.

SECOND CAUSE OF ACTION

**Failure to Respond to Information Requests
Violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210**

12. The Department realleges and incorporates Paragraphs 1 through 11 by reference.

13. On July 16, 2007, FINRA staff sent a written request for information to Johnson in which the staff requested that Johnson provide it with information regarding his sale of an Allianz equity-indexed annuity to customer ML, his affiliation with Allianz, and the possible sale of Allianz products to other MetLife customers ("July 16th Request").

14. The response date for the July 16th Request was July 30, 2007.

15. The July 16th Request was issued pursuant to NASD Procedural Rule 8210 and was sent to Johnson at his CRD residential address of record, [REDACTED], [REDACTED], by first class mail. The letter sent to Johnson has not been returned by the United States Postal Service to the FINRA Florida District Office ("District Office").

16. Johnson failed to respond to the July 16th Request.

17. Accordingly, on August 14, 2007, the staff sent a second written request for information to Johnson pursuant to NASD Procedural Rule 8210 ("August 14th Request").

18. The August 14th Request informed Johnson that he had failed to respond to the staff's previous letter and requested that Johnson provide the staff with the information previously requested. The August 14th Request further advised Johnson that "[f]ailure to comply with this request may subject [him] to disciplinary action."

19. The response date for the August 14th Request was August 28, 2007.

20. The August 14th Request was sent by first class and certified mail to Johnson at his CRD residential address of record, [REDACTED] These mailings have not been returned by the United States Postal Service to the District Office. The certified mailing return receipt card for the certified mailing that was sent to Johnson was returned by the United States Postal Service to the District Office reflecting delivery to the aforementioned address on August 20, 2007. The signature on that card reflects that it was received by "Karen T. Johnson."

21. Johnson failed to respond to the August 14th Request.

22. Accordingly, on September 11, 2007, the staff sent a final written request for information to Johnson pursuant to NASD Procedural Rule 8210 ("September 11th Request").

23. The September 11th Request informed Johnson that he had failed to respond to the staff's previous letters and requested that Johnson provide the staff with the information previously requested. The September 11th Request further advised Johnson that "[f]ailure to comply with this request may subject [him] to disciplinary action."

24. The response date for the September 11th Request was September 25, 2007.

25. The September 11th Request was sent by first class and certified mail to Johnson at his CRD residential address of record, [REDACTED] The first class mailing has not been returned to the District Office. On approximately October 18, 2007, the certified mailing was returned to the District Office by the United States Postal Service marked "UNCLAIMED."

26. Johnson failed to respond to the September 11th Request.

27. Johnson has failed to respond to the staff's repeated requests for information.

28. By failing to produce the information requested in the staff's July 16th Request, August 14th Request, and September 11th Request, Johnson violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

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 monetary sanctions and/or that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- B. Order that Respondent bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: April 18, 2008



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