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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESSE J. HINKLEY
(CRD No. 5098659),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007007358602

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between November 8, 2006 and March 1, 2007, Jesse J. Hinkley ("Hinkley"), while registered with FINRA through member firm New Castle Financial Services LLC (BD No. 102380) ("New Castle"), engaged in improper telephone solicitations of potential customers in connection with the offer of securities. Specifically, Hinkley:
 - a. Made false representations, including unwarranted price predictions, and omitted material facts, in violation of NASD Conduct Rule 2110; and
 - b. Used telemarketing scripts never approved by a registered principal, which
 - (i) contained unwarranted price predictions, misleading and exaggerated statements, and (ii) omitted required disclosures and material facts,

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causing the scripts to be misleading, in contravention of NASD IM-2210-1 and in violation of NASD Conduct Rules 2210(b) and (d) and 2110.

2. Hinkley also failed to appear for a FINRA on-the-record ("OTR") interview, and failed to provide requested information and documents in connection with his earlier non-appearance at a scheduled OTR, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

3. Hinkley first became registered with FINRA as a General Securities Representative ("GSR") on or about May 15, 2006 through a member firm.
4. From on or about November 8, 2006 through August 14, 2007, Hinkley was registered with FINRA as a GSR through New Castle.
5. On August 14, 2007, New Castle filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Hinkley, indicating his employment was terminated "for cause" on July 16, 2007.
6. Hinkley is not currently associated with a FINRA member firm. However, FINRA retains jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION (MATERIAL MISREPRESENTATIONS AND OMISSIONS) NASD CONDUCT RULE 2110

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. Between November 8, 2006 and March 1, 2007, Hinkley, in soliciting four potential customers to purchase securities, by telephone, made untrue

statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

9. Specifically, when soliciting three potential customers by telephone to purchase Orasure Technologies, Inc. ("Orasure") common stock, Hinkley made false representations in the form of unwarranted price predictions.
10. Orasure stock had a history of substantial past price fluctuations.
11. Despite the volatility in the price of Orasure stock and various factors that could significantly impact the market for Orasure stock, Hinkley made bold price predictions. For example:
 - a. To two potential customers, he predicted that the stock would increase 57% (from \$8.3 to \$13 per share) within six weeks. He further predicted to one of those potential customers that the stock would increase by at least 201% (to between \$25 and \$30 per share) in about one year.
 - b. To another potential customer, Hinkley predicted that the stock would increase 53% (from around \$8.5 to \$13 per share) within six weeks and increase by at least 194% (to \$25 per share) in about one year.
12. Hinkley lacked a reasonable basis for the price predictions.
13. Additionally, when soliciting the three potential customers to purchase Orasure stock and another potential customer, by telephone, to purchase Starbucks stock, Hinkley touted the companies but omitted to disclose any risks associated with the proposed investments.

14. Moreover, Hinkley falsely represented that he had years of success as a broker in managing customer accounts (when he had actually been a broker for less than one year) and misleadingly suggested that past performance implied future performance. For example:

- a. He asked one potential customer: "If I had been your broker for the past couple of years, consistently making you 30 to 40% in your portfolio, would you be a little less hesitant in working with me right now?"
- b. He asked another potential customer: "If I'd been your broker for the past, you know, couple of years, making you consistently 40% in your portfolio, would you be a little less hesitant?" He further inquired: "If I had been your broker, like I'm saying, for the past three years, consistently bringing you winner after winner, would you be a little less hesitant in working with me right now?"

15. He also falsely represented a minimum share requirement for processing an order through his firm. Specifically, he advised three potential customers of completely different minimum share requirements: 100, 300 and 500.

16. His misrepresentations and omissions were material.

17. Hinkley failed to observe high standards of commercial honor and just and equitable principles of trade.

By reason of the foregoing, Hinkley violated NASD Conduct Rule 2110.

**SECOND CAUSE OF ACTION
(IMPROPER USE OF TELEMARKETING SCRIPTS)
NASD IM-2210 AND NASD CONDUCT RULES 2210(b) AND (d) AND 2110**

18. The Department realleges and incorporates by reference paragraphs 1 through 17 above.
19. In connection with the-above referenced telephone solicitations, Hinkley used sales scripts.
20. These telemarketing scripts (the "scripts") constituted "sales literature" as defined in NASD Conduct Rule 2210(a)(2).
21. The scripts were not approved prior to use by a registered principal of the firm, in violation of NASD Conduct Rule 2210(b)(1).
22. The scripts relating to Orasure did not disclose the name of the member firm with which Hinkley was associated (New Castle), in violation of NASD Conduct Rule 2210(d)(2)(C)(i).
23. The scripts failed to provide, or offer to furnish upon request, available investment information supporting each recommendation, in contravention of NASD IM-2210-1(6)(B).
24. Certain of the scripts discussed past recommendations in other securities, which the scripts claimed were successful, without setting forth all recommendations (of other securities of the same type, kind, grade or classification) made by New Castle or the broker within the last year, in contravention of NASD IM-2210-1(6)(C) and in violation of NASD Conduct Rule 2210(d)(1)(A).

25. Additionally, one script implied that customer portfolios managed by the broker over the last couple of years consistently returned 40% to 50%, without providing any details, and without indicating that past performance is not a guarantee of future performance or success, in violation of NASD Conduct Rule 2210(d)(1)(A) and (D).
26. Scripts regarding Starbucks improperly implied that insider purchases necessarily indicated that the stock price was going to rise sharply in the short term, in violation of NASD Conduct Rule 2210(d)(1)(B).
27. The scripts were not fair and balanced, but instead, omitted material facts and were materially misleading, in violation of NASD Conduct Rule 2210(d)(1)(A). For example, the scripts, while touting the securities, disclosed nothing about any risks associated with the recommended securities.
28. The scripts also contained unwarranted price predictions and performance projections, in violation of NASD Conduct Rule 2210(d)(1)(B) and (D).

Examples include:

- a. "[S]it tight with 1,000 shares [of Orasure purchased at \$8 per share], I[ll] turn your 8 grand into 16 thousand over the next 6-8 weeks, you let that performance dictate future business. Is that fair?!!"
- b. "Right now it [Orasure] sits right around \$8. Over the next 6-8 weeks we see it going straight back to its high of 14."
- c. Starbucks will jump from \$36 to \$50 in eight weeks. "Buy 1000 shares before it's too late. If you send me 35K, I believe it's worth 50K in the next 8 weeks. What do you say?"

By reason of the foregoing, Hinkley acted in contravention of NASD IM-2210-1 and violated NASD Conduct Rules 2210(b) and (d) and 2110.

**THIRD CAUSE OF ACTION
(FAILURE TO TESTIFY AND PRODUCE INFORMATION AND DOCUMENTS)
NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110**

29. The Department realleges and incorporates by reference paragraphs 1 through 28 above.

The First Request

30. In connection with FINRA's examination concerning Hinkley's telemarketing practices, on March 3, 2008, FINRA staff (the "Staff") sent a letter to Hinkley requesting that he appear and testify on March 17, 2008 at an OTR at FINRA's Long Island District Office (the "First Request").

31. The First Request was made pursuant to NASD Procedural Rule 8210.

32. The Staff sent the First Request by certified mail, return receipt requested and by regular first-class mail to Hinkley's residential address as listed on the Central Registration Depository [REDACTED] ("CRD Address").

33. The certified mailing was returned to the Staff by the United States Postal Service ("USPS") with the notation "return to send," "unclaimed" and "unable to forward."

34. The regular first class mailing was not returned by the USPS.

35. On March 10, 2008, Hinkley telephoned the Staff and requested that his OTR be postponed. During that call, he and the Staff agreed that the OTR would be rescheduled for Monday, April 7, 2008.

The Second Request

36. On March 20, 2008, the Staff telephoned Hinkley to confirm the OTR scheduled for April 7, 2008. Hinkley advised that he would appear on that date without counsel.

37. On March 20, 2008, the Staff sent Hinkley a letter further confirming its request that he appear at FINRA's Long Island Office to give testimony on the rescheduled date, Monday, April 7, 2008 (the "Second Request"), and Hinkley's agreement concerning the new OTR date.

38. The Second Request was made pursuant to NASD Procedural Rule 8210. The Staff warned of possible disciplinary action if Hinkley failed to appear.

39. The Staff sent the Second Request to the CRD Address by certified mail, return receipt requested and by Federal Express.

40. The return receipt card for the certified mailing to the CRD Address was returned to the Staff by the USPS, signed by "Theresa Bucko," with a delivery date listed as "3-26-8."

41. The Federal Express package was delivered to the CRD Address on March 21, 2008.

42. On Saturday, April 5, 2008, Hinkley left a voicemail message for the Staff that he would not be attending the OTR due to a "family emergency"

requiring his travel to Georgia. In his message, he added, "I was wondering if there is any way we can reschedule," and requested that the Staff call him on his cell phone when they have the chance.

43. On April 7, 2008, upon retrieving Hinkley's message at 8:44 a.m., the Staff immediately called Hinkley's cell phone and left a message for him to call back regarding the OTR.
44. Hinkley did not return the Staff's call and did not appear for the OTR.
45. The Staff never excused Hinkley from attending the OTR scheduled for April 7, 2008, lacking the necessary information to ascertain whether there was indeed a true emergency or whether Hinkley was simply acting to further delay or avoid giving testimony.
46. In an effort to learn the circumstances of Hinkley's non-appearance and to schedule a new date for his OTR, the Staff called Hinkley's cell phone on April 10, 2008 and on April 14, 2008, leaving messages, but Hinkley did not return the Staff's calls.

The Third Request

47. On April 14, 2008, the Staff sent Hinkley a letter requesting that he appear and give testimony on May 8, 2008 at an OTR at FINRA's Long Island Office (the "Third Request").
48. In that letter, the Staff advised that if Hinkley did not call the Staff by April 23, 2008 and unequivocally confirm that he would attend the interview as scheduled, the Staff would consider his failure to do so as his indication of his

intention not to appear and the equivalent of his failure to show up at the interview.

49. In the letter, Staff also requested that Hinkley produce to the Staff by April 23, 2008, (i) a signed and dated statement by him, explaining in detail the family emergency that he claimed required his traveling to Georgia rather than appearing at the scheduled FINRA interview; and (ii) copies of documentary evidence of his trip to Georgia and his travel-related expenses.
50. The Third Request was made pursuant to NASD Procedural Rule 8210. The Staff warned of possible disciplinary action if Hinkley failed to appear and/or failed to comply with the Staff's request for information and documents.
51. The Staff sent the Third Request letter to Hinkley at the CRD Address by (i) certified mail, return receipt requested, and (ii) Federal Express overnight delivery.
52. The certified mailing was returned to the Staff by the USPS with the notation "return to send," "unclaimed" and "unable to forward."
53. The Federal Express package was delivered to the CRD Address on April 15, 2008.
54. On April 24, 2008, having not received any of the requested information or documents, the Staff called Hinkley's cell phone number and left a message. Hinkley did not return the Staff's call.
55. On May 7, 2008, the Staff called Hinkley's cell phone and left a message, reminding him of the scheduled OTR and inquiring about the status of the

information and documents requested. Again, Hinkley did not return the Staff's call.

56. On May 8, 2008, Hinkley simply failed to appear for the OTR.

57. Since that time, Hinkley has not communicated with FINRA and has not indicated any willingness to comply FINRA's requests.

By reason of the foregoing, Hinkley violated NASD Procedural Rule 8210 and Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. Order that Hinkley bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

February 9, 2009

FINRA DEPARTMENT OF ENFORCEMENT

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