

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESSE JOHN HINKLEY
(CRD No. 5098659)

Respondent.

Disciplinary Proceeding
No. 2007007358602

Hearing Officer-RSH

DEFAULT DECISION

August 10, 2009

Respondent was barred from associating with any member firm in any capacity for making material misrepresentations and omissions in violation of Rule 2110. He was also barred for violating Rules 8210 and 2110 by failing to respond to requests for testimony. In light of the bars, no additional sanction was imposed for his improper use of telemarketing scripts in violation of Rules 2210(b), 2210(d) and 2110 and IM-2210.

Appearances

Gary A. Chodosh, Senior Regional Counsel, and David M. Jaffe, Regional Chief Counsel, FINRA, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed a Complaint (attached to this Decision as Exhibit A) in this proceeding on February 10, 2009. The Complaint asserted three causes of action against Respondent Jesse John Hinkley ("Respondent"): violation of Conduct Rule 2110 by making material misrepresentations and omissions in the recommendation of securities; violation of Conduct Rules 2210 and 2110 and Interpretive Materials ("IM")-2210 by improperly using telemarketing scripts; and violation of Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for testimony.

Respondent did not answer or otherwise respond to the Complaint. Consequently, on June 10, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Gary A. Chodosh ("Chodosh Decl.") and six exhibits. Respondent did not reply to the motion.¹

I. Jurisdiction

Respondent first became registered with NASD (FINRA's predecessor) as a General Securities Representative ("GSR") in May 2006. From November 8, 2006 through August 14, 2007, Respondent was registered as a GSR through New Castle Financial Services LLC ("New Castle").² On August 14, 2007, New Castle filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Respondent, indicating that his employment had been terminated "for cause" on July 16, 2007.³

Although Respondent has not been registered with FINRA since August 14, 2007, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his registration.⁴

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

² Complainant's Exhibit ("CX")-1.

³ CX-2.

⁴ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

II. Respondent's Default

On February 9, 2009, Enforcement served the Complaint and First Notice of Complaint to Respondent's last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address") by first-class and certified mail. The first-class mailing was not returned to Enforcement; however, the certified mailing was returned stamped "Unclaimed."⁵

On March 27, 2009, Enforcement mailed the Complaint and Second Notice of Complaint to Respondent's CRD Address by first-class and certified mail. As before, the first-class mailing was not returned, and the certified mailing was returned marked "Unclaimed."⁶ The Second Notice of Complaint stated that Respondent was required to answer the Complaint by April 13, 2009. On or about May 6, 2009, Respondent contacted Enforcement Staff by telephone and stated that he had moved from his CRD Address and had just received the Complaint.⁷ Respondent told the Staff that he wished to consult with counsel to decide "whether he would respond to the Complaint, attempt to settle the disciplinary charges, or take no action."⁸ To give Respondent time to consult with his attorney, Enforcement requested, and was granted, an extension of time, until June 11, 2009, to file a Motion for Entry of Default Decision.⁹ The Respondent did not contact Enforcement again. To date, Respondent has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.

The Hearing Officer finds that Enforcement properly served Respondent with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in

⁵ Chodosh Decl., ¶¶ 57-58; CX-3, 4.

⁶ Chodosh Decl., ¶¶ 60-61; CX-5, 6.

⁷ Chodosh Decl., ¶ 4.

⁸ Chodosh Decl., ¶ 6.

⁹ Chodosh Decl., ¶ 9.

accordance with FINRA Procedural Rule 9134(b)(1), thereby giving him constructive notice of this disciplinary proceeding. Respondent also told Enforcement Staff that he had actually received a copy of the Complaint. By failing to answer the Complaint, Respondent defaulted.¹⁰ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.¹¹

III. Violations

A. Material Misrepresentations and Omissions in Recommending Securities

In the First Cause of Action of its Complaint, Enforcement alleged that between November 8, 2006, and March 1, 2007, Respondent, in soliciting four potential customers by telephone to buy securities, made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

Specifically, Respondent made unfounded price predictions, telling the potential customers, for example, that the price of Orasure Technologies, Inc. ("Orasure"), a stock with a history of price volatility, would increase 57% within six weeks and 201% within a year. Respondent lacked a reasonable basis for making such price predictions. In addition, Respondent omitted to disclose any of the risks associated with the investments. Respondent also falsely represented to the potential customers that he had years of

¹⁰ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹¹ On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. *See*, Regulatory Notice 08-57. Pursuant to the consolidation, NASD Rules 9210-9290 were superseded by FINRA Rules 9210-9290. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules. The FINRA Rules are at www.finra.org/Rules.

success as a broker managing customer accounts, when in fact he had been a broker for less than one year.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent made material misrepresentations and omissions in recommending securities. In so doing, he failed to observe high standards of commercial honor and just and equitable principles of trade, thereby violating Conduct Rule 2110.

B. Improper Use of Telemarketing Scripts

In the Second Cause of Action of its Complaint, Enforcement alleged that Respondent used unapproved, misleading telemarketing scripts in connection with the telephone solicitations described above. The telemarketing scripts that Respondent used were "sales literature" within the meaning of Conduct Rule 2210(a)(2), yet Respondent failed to obtain approval for the scripts from a registered principal of New Castle, as required by Conduct Rule 2210(b)(1). The scripts Respondent used failed to identify New Castle as the member firm with which he was affiliated, thereby violating Conduct Rule 2210(d)(2)(C)(i). The scripts failed to provide, or offer to furnish upon request, available investment information supporting each recommendation, in contravention of IM-2210-1(6)(B). The scripts Respondent used also discussed past recommendations in other securities, which Respondent claimed were successful, without setting forth all recommendations of other similar securities made by New Castle in the previous year, in contravention of IM-2210-1(6)(C) and in violation of Conduct Rule 2210-(d)(1)(A). One script implied that customer portfolios managed by Respondent consistently returned 40% to 50%, without providing any details and without stating that past performance is

not a guarantee of future success, in violation of Conduct Rule 2210(d)(1)(A) and (D). Finally, the Complaint alleged that the telemarketing scripts were not fair and balanced, but instead, omitted material facts and were materially misleading, in violation of Conduct Rule 2210(d)(1)(A); contained unwarranted price predictions and performance projections, in violation of Conduct Rule 2210(d)(1)(B); and implied that insider purchases necessarily indicated that the stock price was going to rise sharply in the short term, in violation of Conduct Rule 2210(d)(1)(B).

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent acted in contravention of IM-2210-1 and Conduct Rules 2210(b) and (d) and 2110.

C. Failure to Respond to Requests for Testimony

In the Third Cause of Action of its Complaint, Enforcement alleged that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to three written requests, made pursuant to Procedural Rule 8210, that he appear for testimony concerning his telemarketing practices at New Castle. On March 3, 2008, FINRA Staff sent the first request by first-class and certified mail to Respondent at his CRD address. The certified mailing was returned marked "return to send," "unclaimed" and "unable to forward." The first-class mailing was not returned. On March 10, 2008, Respondent called the Staff and requested that his testimony be postponed until April 7, 2008.¹²

On March 20, 2008, FINRA Staff sent a second request to Respondent at his CRD Address by certified mail and overnight delivery. The certified return receipt card was returned to the Staff signed by "Theresa Bucko." The overnight mailing was delivered to

¹² Chodosh Decl., ¶¶ 39-41.

the CRD Address on March 21, 2008. On April 5, 2008, Respondent left a voicemail with the Staff saying that he had an unspecified “family emergency” and would not be able to attend. He failed to appear at the testimony scheduled for April 7, 2008. Respondent did not return any of the Staff’s subsequent calls.¹³

On April 14, 2008, the Staff sent respondent a request that he appear for testimony on May 8, 2008. The request was sent to the CRD Address by certified mail and overnight delivery. The certified mailing was returned marked “return to send,” “unclaimed,” and “unable to forward.” The overnight package was delivered to the CRD Address on April 15, 2008. To date, Respondent has not responded to the Staff’s request for testimony.¹⁴

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond in any manner to two requests for testimony, in violation of Procedural Rule 8210. Because Respondent requested a postponement of the first scheduled testimony, and the Staff agreed to the postponement, Respondent’s failure to appear for testimony in response to the first request did not violate Rule 8210. A violation of Rule 8210 is also a violation of Rule 2110.¹⁵

IV. Sanctions

A. Material Misrepresentations and Omissions in Recommending Securities

The use of misrepresentations and omissions of material facts in the solicitation of the public is inconsistent with just and equitable principles of trade and violates Conduct

¹³ Chodosh Decl., ¶¶ 42-48.

¹⁴ Chodosh Decl., ¶¶ 49-56..

¹⁵ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

Rule 2110.¹⁶ In this case, the Respondent made specific price predictions concerning a stock with significant risk and price fluctuations without disclosing those facts to the customers he solicited. Such facts would clearly have been material to any investor considering purchasing the stock. He also improperly suggested that past results implied future performance. In addition, the Respondent falsely told prospective investors that he had years of success as a broker, when he had only been a broker for less than one year. All of these representations and omissions appear to have been intentional, or at least reckless. “Reckless conduct has been defined as a highly unreasonable misrepresentation or omission, involving not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.”¹⁷

For intentional or reckless material omissions of fact, the FINRA Sanction Guidelines (“Sanction Guidelines”) provide for fines ranging from \$10,000 to \$100,000, suspension for a period of 10 business days to two years, and, in an egregious case, a bar.¹⁸ In this case, the Respondent engaged in a pattern of intentional or reckless conduct by repeating the same misrepresentations and omissions to four different potential customers. The Hearing Officer finds that the Respondent’s conduct was egregious and that there are no mitigating facts. Consequently, he will be barred for this violation.

¹⁶ *Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *14 (Feb. 10, 2004).

¹⁷ *Department of Enforcement v. Abbondante*, 2005 NASD Discip. LEXIS 43, at *28 (N.A.C. Apr. 5, 2005) (citations omitted), *aff’d*, 2006 SEC LEXIS 23 (2006), *aff’d*, 2006 U.S. App. LEXIS 30982 (2d Cir. 2006).

¹⁸ *FINRA Sanction Guidelines 2007* at 93.

B. Improper Use of Telemarketing Scripts

For the intentional or reckless use of misleading communications with the public (if not over an extended period), the Sanction Guidelines recommend a fine of \$10,000 to \$100,000 and a suspension for up to two years.¹⁹ While the Respondent's violation of Rule 2210 is serious and would merit a sanction at the upper end of the recommended sanctions, in light of the bars for the Respondent's misrepresentations and omissions, and failure to respond to information requests, no additional sanction will be imposed for this violation.

C. Failure to Respond to Requests for Testimony

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.²⁰ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.²¹ For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²² Here, Respondent failed to respond in any manner to two requests that he appear for testimony in connection with his telemarketing activity. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

Accordingly, the Hearing Officer finds that Respondent should be barred from associating with any FINRA member in any capacity for violating Rules 8210 and 2110.

¹⁹ *FINRA Sanction Guidelines 2007*, at 85.

²⁰ *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000); *Department of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003).

²¹ *Joseph P. Hannan*, Exchange Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²² *FINRA Sanction Guidelines 2007* at 35.

V. Order

Jesse John Hinkley is barred from associating with any member firm in any capacity for failing to respond to requests for testimony in violation of Procedural Rule 8210 and Conduct Rule 2110. He is also barred for making material misrepresentations and omissions in violation of Rule 2110. In light of the bars, no additional sanction is imposed for improperly using telemarketing scripts in violation of Rules 2210(b), 2210(d), and 2110 and IM-2210.

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

SO ORDERED.

A handwritten signature in dark ink, appearing to read "Rochelle S. Hall", is written over a horizontal line.

Rochelle S. Hall
Hearing Officer

Copies to: Jesse J. Hinkley (*via overnight courier and first-class mail*)
 Gary A. Chodosh, Esq. (*via electronic and first-class mail*)
 Mark P. Dauer, Esq. (*via electronic mail*)
 David R. Sonnenberg, Esq. (*via electronic mail*)
 David Jaffe, Esq. (*via electronic mail*)

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

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,

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

sb

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