

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DALE R. MENENDEZ
(CRD No. 4880000),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007007400501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While associated with Westpark Capital, Inc. ("Westpark" or the "Firm") Dale R. Menendez ("Menendez") executed three unauthorized trades in one customer's account and excessively traded a second customer's account. In that second account, Menendez also repeatedly mischaracterized solicited trades as "unsolicited." Menendez later failed to appear for on-the-record testimony in connection with the staff's investigation of his misconduct. Menendez violated: (i) NASD Conduct Rule 2110 by executing unauthorized trades; (ii) NASD Conduct Rules 2310 and 2110 and IM-2310-2 by engaging in unsuitably excessive trading; (iii) NASD Conduct Rules 3110 and 2110 by causing his Firm's books and records to be inaccurate; and (iv) NASD Rule 8210 and NASD Conduct Rule 2110 by failing to appear for testimony.

000-058-287-2009

RESPONDENT AND JURISDICTION

2. From February 28, 2006 through January 29, 2007 and from April 27, 2007 through September 14, 2007, Menendez was associated with Westpark Capital, Inc. ("Westpark" or the "Firm") as a General Securities Representative. Subsequently, from October 3, 2007 through October 18, 2007, Menendez was associated with another member firm in a non-registered capacity. Pursuant to Article V, Section 4 of FINRA's By-Laws, Menendez remains subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION **(Unauthorized Trading in Customer T.M.'s Account)** **(NASD Conduct Rule 2110)**

3. The Department of Enforcement realleges and incorporates by reference paragraphs 1 and 2, above.

4. In early June 2006, Menendez telephoned customer T.M. and persuaded him to open an account at Westpark. At the time, T.M. and Menendez orally agreed that T.M. would not be charged more than \$750.00 for any transaction in his account.

5. In December 2006, after noticing that his account was diminishing in value, T.M. directed Menendez not to execute any further transactions.

6. Subsequently, on December 29, 2006, while T.M. was outside of the United States on a business trip, Menendez executed three transactions in his account without T.M.'s knowledge or consent. One of the three transactions included a purchase of 7,300 shares of Plantronics, Inc. (ticker symbol "PLT") that Menendez caused to be executed on a riskless principal basis. Menendez charged a \$6,570.00 markup for this transaction, violating his agreement not to charge more than \$750.00 for any one transaction. The other two transactions

involved sales of BEA Systems, Inc. (ticker symbol "BEAS") and Encore Wire Corp. (ticker symbol "WIRE"). Those transactions each included \$500.00 in commissions. Menendez falsely reported to his firm that the Encore Wire Corp. sale was unsolicited. The following table describes these three unauthorized trades:

Date	Security	Net Amount of Transaction	Commission (c) or Markup (m)	Buy (B) or Sell (S)	Marked Unsolicited
12/29/06	BEAS	\$43,477.00	\$500.00 (c)	S	
12/29/06	PLT	\$162,256.00	\$6,570.00 (m)	B	
12/29/06	WIRE	\$109,445.00	\$500.00 (c)	S	√

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

SECOND CAUSE OF ACTION
(Unsuitably Excessive Trading in Customer C.K.'s Account)
(NASD Conduct Rules 2310 and 2110 and IM-2310-2)

8. The Department of Enforcement realleges and incorporates by reference paragraphs 1 and 2, above.

9. In late May or early June 2006, Menendez cold-called customer C.K. and persuaded him to open a brokerage account at Westpark. C.K., who was born in [REDACTED] was nearly 79 years old at the time he opened the account.

10. C.K.'s investment experience was limited to mutual funds that he had purchased through an investment club at work. C.K. was formerly employed as a commercial artist and lithographer. He has been retired since 1995. His income was about \$3,000.00 per month and primarily derived from pensions from several former employers. In June and July 2006, C.K.

funded the account primarily with stock that he inherited from his late wife as well as with mutual fund shares. These securities had a total value at the time the account was opened of \$256,889.06.

11. Although C.K. had no margin experience, Menendez persuaded him to sign a Margin Account Agreement. C.K. told Menendez that he did not want to be too aggressive because he was concerned that he would need money for future nursing home expenses.

12. C.K. relied completely on Menendez's recommendations. Menendez made all of the recommendations and decisions about what securities to buy and sell and when those transactions would occur. C.K. had little understanding of what was transpiring in his account. In particular, he did not understand what he was being charged. Although he attempted to telephone Menendez to discuss his account activity, his calls were not returned.

13. Menendez controlled C.K.'s account from the time that it opened until he terminated his association with Westpark in January 2007. From early June 2006 through December 31, 2006, Menendez engaged in short term buying and selling of securities, utilizing large amounts of margin, and charging high commissions. The charges on individual trades often exceeded \$5,000.00. In one instance involving a purchase of Microsoft shares, Menendez caused C.K. to be charged \$7,750.00. Menendez charged C.K. an additional \$1,000.00 when those shares were sold several weeks later.

14. From June 2006 through December 31, 2006, Menendez caused 54 transactions to be executed (26 purchases and 28 sales) in C.K.'s account. The turnover rate for this period was 14.44. On an annualized basis, the turnover rate was 24.75.

15. In that period, the total trading costs, including commissions, markups, margin interest charges, and handling fees amounted to \$123,285.85. The cost-to-equity ratio for that seven-month period was 69%. On an annualized basis, the cost-to-equity ratio was 119%. That is to say, C.K.'s account would have had to appreciate by 119 percent annually just to break even.

16. In June and July 2006, C.K. transferred securities into his account worth \$256,889.06. By December 31, 2006, he had sustained a loss of \$110,528.73.

17. The amount of activity in C.K.'s account was inconsistent with his objectives and financial situation.

18. By reason of the foregoing, Menendez violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

THIRD CAUSE OF ACTION

**(Causing Westpark's Books and Records To Be Inaccurate by Falsely Characterizing Trades in Customer C.K.'s Account As "Unsolicited")
(NASD Conduct Rules 3110 and 2110)**

19. The Department of Enforcement realleges and incorporates by reference paragraphs 1, 2, and 8 through 18, above.

20. Menendez solicited all 54 trades in C.K.'s account from June 2006 through December 31, 2006. On at least 13 occasions, Menendez mischaracterized solicited trades as "unsolicited," thereby causing Westpark's books and records to be inaccurate.

21. The thirteen mismarked trades in C.K.'s account are as follows:

No.	Date	Security	Net Amount	Commission	Buy (B) or Sell (S)
1	6/29/06	MVL	\$18,984.91	600.00	B
2	7/14/06	ALL	\$9,677.21	350.00	S
3	7/14/06	JANSX	\$5,932.26	0.00	S
4	7/14/06	MFC	\$1,298.20	65.00	S
5	7/14/06	MS	\$7,657.48	65.00	S
6	7/14/06	PGRWX	\$202,348.24	0.00	S
7	7/18/06	MET	\$23,056.25	750.00	S
8	7/20/06	UARM	\$197,537.00	6,974.99	B
9	7/21/06	MSFT	\$246,802.00	7,750.00	B
10	8/31/06	ELNK	\$7,207.77	100.00	S
11	8/31/06	THOR	\$9,878.09	100.00	S
12	8/31/06	TYL	\$77,799.79	100.00	S
13	9/19/06	RNWK	\$131,903.92	100.00	S
Total				\$16,954.99	

22. By reason of the foregoing, Menendez violated NASD Conduct Rules 3110 and 2110.

FOURTH CAUSE OF ACTION
(Failure to Appear For On-The-Record Testimony)
(NASD Rule 8210 and Conduct Rule 2110)

23. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 22, above.

First Notice

24. In connection with its investigation into unauthorized and unsuitable trading in Westpark accounts that Menendez serviced, on September 7, 2007, FINRA staff requested,

pursuant to Rule 8210, that Menendez appear for on-the-record testimony ("OTR") at FINRA's New York office at One Liberty Plaza, on November 14, 2007.

25. The request was sent by first class and certified mail to Menendez's CRD address, [REDACTED]. The request sent by first class mail was returned with the notation "Return to Sender No Such Street Unable to Forward." The request sent by certified mail was returned with the notation, "Not Deliverable As Addressed, Unable to Forward."

26. After these letters were returned, FINRA staff conducted a LEXIS search to find alternative addresses. The search identified a possible address (which CRD identified as a prior residential address from March 1998 through March 2002): [REDACTED] ("Alternate Address").

27. On September 17, 2007, the staff, pursuant to Rule 8210, sent requests by first class and certified mail to the Alternate Address directing Menendez to appear for an OTR on November 14, 2007, at FINRA's One Liberty Plaza office. The letter sent by first class mail was returned with the notation, "Returned to Sender Not Deliverable As Addressed Unable to Forward." The notice sent by certified mail was returned and marked, "Undeliverable as Addressed, Forwarding Order Expired."

28. On October 5, 2007, after becoming apprised of Menendez's recent association with another FINRA member firm, the staff sent the request to the firm's Compliance Officer and requesting that she forward the notice to Menendez and ensure that his Form U4 included a valid and current residential address. On October 9, 2007, the Compliance Officer informed the staff that she had provided Menendez with the OTR request and that she believed that the [REDACTED] Address was a correct address.

29. On November 2, 2007, Menendez spoke with the staff and stated that he would be unable to appear for an OTR on November 14, 2007, but would be able to appear on December 11, 2007.

Second Notice

30. On November 9, 2007, the staff, pursuant to Rule 8210, sent notices via Federal Express to Menendez's CRD residential address and to the Alternate Address directing him to appear for an OTR on December 11, 2007 at FINRA's One Liberty Plaza office.

31. On November 12, 2007, Menendez left a telephone message with the staff stating that he had received notice of the December 11, 2007 OTR.

32. On December 5 and 6, 2007, the staff left messages with Menendez reminding him to appear for his December 11, 2007 OTR.

33. On December 10, 2007, Menendez telephoned the staff, stated that he had recently been discharged from a medical facility, was under a physician's care, and did not believe he would be able to testify on December 11, 2007. After that conversation, he forwarded a document entitled "Discharge/Transfer Summary" indicating that he had been discharged from the facility on December 5, 2007. The staff agreed to reschedule the OTR.

Third Notice

34. On December 27, 2007, the staff, pursuant to Rule 8210, sent a notice via Federal Express to Menendez's CRD residential address and to another address that was identified in the Discharge/Transfer Summary ("Second Alternate Address") directing that he appear for an OTR on January 10, 2008 at FINRA's One Liberty Plaza office. Menendez failed to appear for his OTR on January 10, 2008.

35. On January 21, 2008, Menendez telephoned the staff and stated that he had mistaken the date for his January 10, 2008 OTR, but that he would cooperate and was attempting to retain counsel. In turn, the staff asked Menendez to provide proposed dates that he and his prospective counsel would be available to appear for an OTR.

36. On February 4 and 5, 2008, Menendez telephoned the staff and stated that he needed additional time to retain counsel before he could offer any proposed OTR dates.

Fourth Notice

37. Menendez never offered any proposed OTR date. Accordingly, on March 13, 2008, the staff, pursuant to Rule 8210, sent notices via Federal Express to his CRD Address and to his Second Alternate Address directing that he appear for an OTR on May 14, 2008 at FINRA's Long Island Office located at Two Jericho Plaza, Jericho, New York. On March 25, 2008, the staff also sent notice of this May 14, 2008 OTR to Menendez's Alternate Address.

38. Menendez did not contact the staff in response to the notice of the May 14, 2008 OTR and then failed to appear on May 14, 2008.

39. By failing to appear for testimony, Menendez violated NASD Rule 8210 and NASD Conduct Rule 2110.

RELIEF REQUESTED

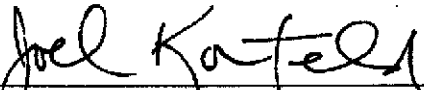
WHEREFORE, the Department respectfully requests that the Panel:

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: October 7, 2009


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