

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHANSE K. MENENDEZ, SR.
(CRD No. 2448467)

Respondent.

Disciplinary Proceeding
No. 2007007400505

Hearing Officer – SNB

DEFAULT DECISION

November 1, 2010

Respondent is barred from associating with any member firm in any capacity for engaging in excessive and unsuitable trading in customer accounts, in violation of NASD Rules 2310 and 2110 and IM-2310-2; churning customer accounts, in violation of Securities Exchange Act Section 10(b), Rule 10b-5, and NASD Rules 2120 and 2110; and failing to appear for on-the-record testimony, in violation of NASD Rules 8210 and 2110. Respondent is also ordered to pay restitution to the customers. In light of the bars, no further sanctions are imposed for causing his firm's books and records to be inaccurate, in violation of NASD Rules 3110 and 2110.

Appearances

Joel T. Kornfeld, Esq., Los Angeles, CA, for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Background

On April 13, 2010, the Department of Enforcement ("Enforcement") filed the attached Complaint against Chanse K. Menendez, Sr. ("Respondent"). The Complaint alleges that Respondent engaged in excessive and unsuitable trading in customer accounts, in violation of NASD Rules 2310 and 2110 and IM-2310-2; churned customer accounts, in violation of Section 10(b) of the Securities Exchange Act of 1934

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("Exchange Act"), SEC Rule 10b-5, and NASD Rules 2120 and 2110; caused his firm's books and records to be inaccurate by falsely characterizing trades in customer accounts as unsolicited, in violation of NASD Rules 3110 and 2110; and failed to appear for on-the-record testimony and provide requested information and documents, in violation of NASD Rules 8210 and 2110.¹

Respondent did not file an Answer to the Complaint. Accordingly, on July 12, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Joel T. Kornfeld, Esq. ("Kornfeld Decl.") and ten exhibits ("CX"). On September 7, 2010, Enforcement filed a supplemental statement in support of the motion and the Declaration of Ann D. Glowacki ("Glowacki Decl."). On October 27, 2010, Enforcement filed a further supplement in support of the motion. Respondent did not file a response to the default motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Jurisdiction

From March 2006 until September 14, 2007, Respondent was registered with Westpark Capital, Inc. (the "Firm") as a General Securities Representative. From September 2007 until April 24, 2009, Respondent was registered in the same capacity with two other member firms. Kornfeld Decl. ¶ 3; CX-1. He has not been associated with a member firm since then. CX-1.

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the Rules that were in effect at the time of Respondent's alleged misconduct. In addition, because Enforcement filed the Complaint after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding because (1) the Complaint charges Respondent with misconduct while he was a registered person and with failing to comply with requests for information made prior to the end of the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

III. Respondent's Default

On April 13, 2010, Enforcement served Respondent with the Complaint and Notice of Complaint by first-class and certified mail at his last known residential address according to the Central Registration Depository (the "CRD" address). Kornfeld Decl. ¶ 5; CX-2. The certified mailing was returned, marked, "Unclaimed." Kornfeld Decl. ¶ 2; CX-3. The first-class mailing was not returned. Kornfeld Decl. ¶ 6. Respondent did not file an Answer. Kornfeld Decl. ¶ 7.

In the same manner, on May 12, 2010, Enforcement served Respondent with the Complaint and Second Notice of Complaint at his CRD address. Kornfeld Decl. ¶ 8; CX-4. The certified mailing was returned with the signature "Ralph Menendez." Kornfeld Decl. ¶ 9; CX-5. The first-class mailing was not returned. Kornfeld Decl. ¶ 9. Respondent again did not file an Answer. Kornfeld Decl. ¶ 10.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving him constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

IV. Origin of Investigation

The investigation that led to this disciplinary proceeding followed FINRA Staff's ("Staff") routine examination of the Firm. Kornfeld Decl. ¶ 4.

V. Discussion

A. Suitability/Excessive Trading/Churning

The Complaint alleges that from April 2006 through March 2007, Respondent violated NASD Rules 2310 and 2110 and IM-2310-2 by engaging in excessive and unsuitable trading in the accounts of two customers, KLF and RC. The Complaint also alleges that Respondent violated Exchange Act Section 10(b), SEC Rule 10b-5, and NASD Rules 2120 and 2110 by churning these accounts.

Respondent opened an account for customer KLF in 2005. KLF, a then 49 year old high school graduate, operated a small business purchasing and selling used cars. In 2006, his annual income was approximately \$55,000. His net worth consisted of \$110,000 of equity in his home, his business valued at \$10,000, and a \$40,000 IRA account. He had no liquid assets. He funded his brokerage account at the Firm with money borrowed from his home equity line of credit.

From May 2006 through March 2007, he deposited \$70,000 from this line of credit into his brokerage account. KLF's investment experience was limited to his investment in mutual funds held in his retirement account. The only reference in the record to KLF's investment objective was that he intended to keep the account for the long term and use the proceeds to help fund his retirement. Complaint ¶¶ 3-5, 8; Glowacki Decl. ¶ 7.

Despite KLF's limited financial resources, in April 2006, Respondent persuaded KLF to open a margin account, representing that it would increase his returns. KLF had

never had a margin account before. Respondent did not explain to KLF the costs and risks involved in purchasing securities on margin. Complaint ¶ 6.

From May 1, 2006, through March 31, 2007, Respondent executed 37 transactions in KLF's account. Respondent controlled KLF's account. He decided what securities to buy and sell, when transactions would occur, and what would be charged for those transactions. Complaint ¶ 9; Kornfeld Decl. ¶ 22; CX-8.

KLF was unable to evaluate the transactions or exercise independent judgment over the activity appearing in his account. KLF was not familiar with the securities purchased in his account. He did not understand the terms "mark-up," "solicited," or "unsolicited." He did not understand the costs associated with trades in the account, including charges ranging from \$1,000 to \$2,500 for transactions in highly liquid securities. Complaint ¶¶ 9-10; CX-8; Kornfeld Decl. ¶ 22; Glowacki Decl. ¶ 7.

The total trading costs, including commissions, markups, margin interest and handling fees, amounted to approximately \$23,500. By March 31, 2007, losses to the account were \$28,345.27. Complaint ¶ 11; CX-6, CX-10; 8; Glowacki Decl. ¶¶ 4-6.

Respondent also opened an account for RC in 2005. RC was then a 79 year old retiree who had performed kitchen remodeling and installation work before his retirement in 1988. His annual income was approximately \$40,000 per year. His total net worth was approximately \$300,000, and his liquid net worth was less than \$200,000. His brokerage account with Respondent was worth about \$50,500. The only reference in the record to RC's investment objective was that he wanted to increase the value of the account. Glowacki Decl. ¶ 8. Complaint ¶¶ 12-13.

From May 2006 through February 2007, Respondent executed 43 transactions in RC's account. Although RC had not heard of most of the securities, he always followed

Respondent's advice. Respondent chose what securities to buy and sell, when transactions would occur, and what would be charged for those transactions.

Complaint ¶ 16.

RC was unable to evaluate the transactions or exercise independent judgment over the activity in his account. He did not own a computer and did not have internet access. He did not understand the terms "mark-up," "solicited," or "unsolicited." He also did not understand the costs associated with trades in the account, including charges ranging from \$1,750 to \$2,100 for transactions in highly liquid securities. Complaint ¶ 17.

Between May 1, 2006, and March 31, 2007, total trading costs, including commissions, markups, margin interest charges, and handling fees, were approximately \$24,500. Losses to the account were \$34,326.31. Complaint ¶ 18; CX-7.

Rule 2310(a) requires that "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." Thus, "a representative may make only such recommendations...as would be consistent with the customer's financial situation and needs."³

A registered representative violates Rule 2310 and IM-2310-2 if the representative's recommendations are quantitatively unsuitable, i.e., the representative excessively trades the account.⁴

To be found liable for excessive trading, a broker must first be found to have had control over the account.⁵ Control can be established either by showing that the broker

³ *Dep't of Enforcement v. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *10 (N.A.C. Dec. 3, 2001), *aff'd*, Exchange Act Rel. No. 47335. (Feb. 10, 2003).

⁴ *Dep't of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *34 (N.A.C. July 30, 2009).

had either discretionary authority or de facto control over an account. A broker is deemed to have de facto control when the client routinely follows the broker's advice "because the customer is unable to evaluate the broker's recommendations and to exercise independent judgment."⁶ Here, Respondent had at least de facto control over the KLF and RC accounts. These customers had minimal investing experience, did not understand basic investment concepts, and relied upon Respondent to make investment decisions involving securities with which they were not familiar.

In addition, an excessive trading or quantitative suitability violation requires a finding that the level of activity in the account is inconsistent with the customer's objectives and financial situation.⁷ Although there is no single test for what constitutes excessive activity, factors such as turnover rate and the cost-to-equity ratio are measures that are commonly used.⁸ An annualized turnover rate of six or more creates a presumption that excessive trading has occurred.⁹ A cost-to-equity ratio in excess of 20 percent indicates that excessive trading has occurred.¹⁰

Here, the annualized turnover rate for KLF's account was 15.44, and the cost-to-equity ratio was 100 percent, including margin interest charges.¹¹ The annualized turnover rate for RC's account was 12.29, and the cost-to-equity ratio was 81 percent. These levels are well in excess of the thresholds to establish excessive trading, particularly given these customers' limited resources. Accordingly, Respondent's trading in these accounts was excessive.

⁵ *Dep't of Enforcement v. Cody*, 2010 FINRA Discip. LEXIS 8, at *32 (N.A.C. May 10, 2010); *Medeck*, at *34.

⁶ *Medeck*, at *34 (quoting *Harry Glikman*, 54 SEC 471, 475, 1999 SEC LEXIS 2685, at *6-7 (Dec. 20, 1999)), *aff'd*, 24 Fed. Appx. 702 (9th Cir. 2001)).

⁷ *Id.*

⁸ *Medeck*, at *34.

⁹ *David Wong*, Exchange Act Rel. No. 45426, 2002 SEC LEXIS 339, at *14 n.18 (Feb. 8, 2002).

¹⁰ *Peter C. Bucchieri*, Exchange Act Rel. No. 37218, 1996 SEC LEXIS 1331, at *11, n.11 (May 14, 1996).

¹¹ Without margin interest charges, the cost-to-equity ratio was 92 percent.

Where a third element is present—that the broker acted with the intent to defraud or with reckless disregard for the client’s interests, i.e., scienter—the misconduct also amounts to churning.¹² “Churning occurs when a securities broker buys and sells securities for a customer’s account, without regard to the customer’s investment interests, for the purpose of generating commissions.”¹³ Circumstantial evidence may be used to prove scienter. Reckless disregard may be inferred from the amount of commissions charged by the broker.¹⁴ Excessive trading activity and high costs inconsistent with a customer’s investment objectives and financial situation can be used to prove scienter.¹⁵

Here, the high turnover rates, the cost-to-equity ratios and transaction costs are compelling evidence that Respondent recommended and executed trades in the KLF and RC accounts for his own benefit. There is no evidence that would justify that quantity of trading given the financial situation and investment objectives of the customers.

Accordingly, the allegations of the Complaint and supporting documentation are sufficient to establish that Respondent violated NASD Rules 2310 and 2110 and IM-2310-2 by engaging in excessive and unsuitable trading in the KLF and RC accounts, and violated Exchange Act Section 10(b), Rule 10b-5 and NASD Rules 2120 and 2110 by churning these accounts.

B. Books and Records – Mischaracterization of Orders as “Unsolicited”

SEC Rule 17a-3(a) requires every broker or dealer registered pursuant to Section 15 of the Exchange Act to make and keep current certain books and records relating to its business, including order tickets.¹⁶ In turn, NASD Rule 3110 requires every FINRA

¹² *J. Stephen Stout*, Exchange Act Rel. No. 43410, 2000 SEC LEXIS 2119, at *51 (Oct. 4, 2000).

¹³ *Sandra K. Simpson*, 2002 SEC LEXIS 1278, at *52 (May 14, 2002) (citations omitted).

¹⁴ *Dep’t of Enforcement v. Kelly*, 2008 FINRA Discip. LEXIS 48, at *18-19 (N.A.C. Dec. 16, 2008).

¹⁵ *Medeck*, at *53.

¹⁶ SEC Rule 17a-3(a)(6)-(7).

member to make and preserve the books and records required under SEC Rule 17a-3. It is a violation of NASD Rule 2110 to falsify a member's books and records.¹⁷

Here, Respondent mischaracterized as "unsolicited" 18 trades in KLF's account, 29 trades in RC's account, and 16 trades in the account of a third customer, CT. Complaint ¶¶ 9, 16, 22.

Therefore, the allegations in the Complaint are sufficient to establish that Respondent caused his firm's books and records to be inaccurate, in violation of Rules 3110 and 2110.

C. Failure to Appear for Testimony

The Complaint also alleges that Respondent failed to appear for testimony, in violation of Rules 8210 and Rule 2110.¹⁸

Specifically, on September 7, 2007, FINRA Staff ("Staff") sent Respondent a Rule 8210 request to appear for on-the-record ("OTR") testimony on November 12 and 13, 2007. The request was sent to Respondent at his CRD address by first-class and certified mail. Kornfeld Decl. at ¶ 25. The certified mailing was returned with the notation, "Refused by Addressee." The first-class mailing was not returned. Kornfeld Decl. ¶ 26.

In the first week of November 2007, Staff left telephone messages with Respondent reminding him to appear. Kornfeld Decl. ¶ 27. Several days later, Respondent's counsel requested a postponement of the OTR until December 13 and 14, 2007, which Staff granted. Kornfeld Decl. ¶ 29.

¹⁷ E.g., *Charles E. Kautz*, Exchange Act Rel. No. 37072, 1996 SEC LEXIS 994, at *11-12 (Apr. 5, 1996).

¹⁸ The Complaint also alleges that Respondent failed to respond to requests for documents. Complaint ¶¶ 40-42. Rule 8210(d) provides that a person is deemed to have received a Rule 8210 request if it is sent to his or her CRD address. Here, Staff sent the requests to Respondent's attorney, rather than to Respondent's CRD address. There is no evidence that Respondent was actually aware of the requests. Accordingly, the Hearing Officer does not have a basis to make a finding that Respondent received notice of the requests under Rule 8210(d).

On December 13, 2007, Respondent and his counsel arrived more than two and a half hours late, and the OTR began at 10:45 a.m. When the OTR adjourned for the day at approximately 4:20 p.m., Respondent stated that he would be unable to return to complete his testimony on the following day. As a result, Staff was unable to question Respondent about the trading in the KLF, RC, and CT accounts. Kornfeld Decl. ¶ 29.

Respondent and his counsel offered to resume the OTR at a later date. During March and April 2008, Staff contacted Respondent's counsel numerous times to reschedule the OTR, and offered a number of alternative dates. Kornfeld Decl. ¶ 30. However, Respondent's counsel never agreed to any of the proposed dates or suggested alternative dates to resume the OTR. Kornfeld Decl. ¶ 31.

Accordingly, on May 12, 2008, Staff sent a second Rule 8210 request to appear for an OTR on July 29 and 30, 2008. The request was sent to Respondent at his CRD address by first-class and certified mail. Kornfeld Decl. ¶ 31. The certified mailing was returned with the notation, "Return to Sender Unclaimed Unable to Forward." The first-class mailing was not returned. Kornfeld Decl. ¶ 32.

On May 20, 2008, Respondent's counsel sent Staff an email indicating that he no longer represented Respondent. Kornfeld Decl. ¶ 33. Later that day, in order to ensure that Respondent was aware of his scheduled OTR, Staff contacted the Chief Compliance Officer at Respondent's firm and advised him that Respondent was obligated to appear for an OTR on July 29, 2008. Kornfeld Decl. ¶ 34. On July 21, 2008, Respondent telephoned Staff and confirmed that he would appear for the OTR. Kornfeld Decl. ¶ 35.

Nonetheless, on July 29, 2008, Respondent failed to appear for his OTR. Later that morning, Respondent left a voicemail message for Staff stating that transportation problems prevented him from appearing. In a conversation later that day, Respondent

told Staff that he would appear that afternoon. However, he failed to appear. Kornfeld Decl. ¶¶ 33-35.

On August 15, 2008, Staff sent a third Rule 8210 request to appear for an OTR on September 24, 2008. Kornfeld Decl. ¶ 36. The request was sent to Respondent at his business address by first-class and certified mail. *Id.* The certified mailing was returned with the signature “Dierdre Catelina.” The first-class mailing was not returned. Kornfeld Decl. ¶ 36. Again, Respondent failed to appear for his September 24, 2008 OTR. However, the following day, Respondent sent a letter requesting a postponement, asserting financial hardship. Staff has had no further communications with Respondent since that time.

The requests were served while Respondent was associated with a member firm. CX-1. Respondent received actual notice of the requests and was required to respond, but he failed to do so.

The allegations are sufficient to establish, for purposes of this default decision, that Respondent failed to appear for testimony, in violation of Rule 8210. A violation of Rule 8210 is also a violation of Rule 2110.¹⁹

VI. Sanctions

The FINRA Sanction Guidelines (“Guidelines”) recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²⁰ Here, Respondent failed to appear for continued testimony in connection with the Staff’s investigation, despite multiple requests by Staff. The fact that he responded to Enforcement’s initial request is not sufficiently mitigating to warrant a

¹⁹ *Dep’t of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

²⁰ *Guidelines* at 35 (2007), available at www.finra.org/sanctionguidelines.

sanction other than a bar. Nor are there other mitigating factors that would justify a less severe sanction. Accordingly, Respondent is barred from associating with any FINRA member firm in any capacity for violating Rules 8210 and 2110.

For churning or excessive trading, the Guidelines recommend a fine of \$5,000 to \$75,000 and a suspension in any or all capacities for a period of 10 business days to one year. In egregious cases, the Hearing Officer may consider a longer suspension of up to two years or a bar.²¹ Here, Respondent's misconduct was egregious. Respondent took advantage of two inexperienced customers with limited financial resources, who put their trust in him. The misconduct was extensive, spanning 11 months and involving 80 transactions. Respondent's misconduct resulted in his monetary gain. The commissions and markups on the KLF and RC accounts totaled over \$40,000. Finally, Respondent's misconduct resulted in significant losses to customers, for which he has not attempted to pay restitution. Accordingly, a bar is the appropriate sanction. In addition, Respondent is ordered to pay restitution to KLF and RC for their unreimbursed losses.²² Specifically, Respondent shall pay \$20,321.07 in restitution to KLF, and \$24,608.96 in restitution to RC, plus interest.²³

For recordkeeping violations, the Guidelines recommend a fine of \$1,000 to \$10,000 and a suspension of up to 30 business days, or in egregious cases, a suspension for up to two years, or a bar.²⁴ Enforcement argues that the Guidelines for falsification of records should apply because Respondent's misconduct was intentional. The Guideline for falsification of records recommends a fine of \$5,000 to \$100,000 and a suspension of

²¹ *Id.*

²² *Dep't of Enforcement v. Haq*, No. ELI2004026701, 2009 FINRA Discip. LEXIS 3, at *32-33(N.A.C. April 6, 2009).

²³ Respondent's Firm has already reimbursed KLF and RC \$8,024.20 and \$9,717.35, respectively. Thus, the amount of loss to be reimbursed by Respondent has been reduced by these amounts.

²⁴ *Guidelines* at 30.

up to two years, or a bar, in egregious cases.²⁵ However, because the Complaint does not charge that Respondent intentionally mismarked the order tickets, and the supporting documentation does not address Respondent's intent, Enforcement has not established that it is appropriate to apply the Guideline for falsification of records. The Hearing Officer finds that a substantial suspension of a year or more would be warranted under the circumstances of this case. However, because Respondent is barred for the other violations, the Hearing Officer imposes no further sanctions for this violation.

VII. Conclusion

Respondent is barred from associating with any member firm in any capacity for engaging in excessive and unsuitable trading in customer accounts, in violation of NASD Rules 2310 and 2110 and IM-2310-2; churning customer accounts, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Rules 2120 and 2110; and failing to appear for an on-the-record testimony, in violation of NASD Rules 8210 and 2110. In addition, Respondent is ordered to pay \$20,321.07 in restitution to KLF, and \$24,608.96 in restitution to RC, plus interest on these amounts at the rate of interest established under Section 6621(a)(2) of the Internal Revenue Code from March 31, 2007, until paid.²⁶ In light of the bars, no further sanctions are imposed for causing his firm's books and records to be inaccurate, in violation of NASD Rules 3110 and 2110. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Sara Nelson Bloom
Hearing Officer

²⁵ *Id.* at 39.

²⁶ 26 U.S.C. § 6621(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. Customers KLF and RC are identified in the Addendum to this decision. The Addendum is served only on the parties.

Copies to: Chanse K. Menendez, Sr. *(via overnight and first-class mail)*
Joel T. Kornfeld, Esq. *(via electronic and first-class mail)*
Mark P. Dauer, Esq. *(via electronic mail)*
David R. Sonnenberg, Esq. *(via electronic mail)*

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHANSE K. MENENDEZ, SR.
(CRD No. 2448467),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007007400505

COMPLAINT

The Department of Enforcement alleges:

I. SUMMARY

1. Between April 2006 and March 2007, while associated with Westpark Capital, Inc. ("Westpark or the "Firm"), Chanse K. Menendez, Sr. ("Menendez") excessively traded and churned two customer accounts. Menendez attempted to conceal his misconduct in those accounts as well as in a third account by, among other things, mischaracterizing "solicited" trades as "unsolicited." During the ensuing investigation of his misconduct, Menendez failed to appear for testimony and failed to provide documents. Menendez violated: (i) NASD Rules 2310 and 2110 and IM-2310-2 by engaging in unsuitably excessive trading; (ii) Exchange Act Section 10(b), Rule 10b-5 and NASD Rules 2120 and 2110 by churning accounts; (iii) NASD Rules 3110 and 2110 by causing his Firm's books and records to be inaccurate; and (iv) NASD Rules 8210 and 2110 by failing to appear for on-the-record testimony and failing to produce documents.

II. RESPONDENT AND JURISDICTION

2. From February 27, 2006 through September 14, 2007, Menendez was associated with Westpark as a General Securities Representative. During that period, Menendez owned a former Westpark branch office located in Islandia, New York (the "Islandia Branch"). Menendez associated with two other member firms in the same capacity from September 2007 through April 24, 2009. Although Menendez has not been associated with a FINRA member firm since April 24, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

III. CUSTOMER KLF'S ACCOUNT

3. KLF, born in [REDACTED] is a high school graduate who resides in Pennsylvania. For about 15 years, he operated a small business purchasing and selling used cars. In 2007, he sold his business and became a sales representative at a local Chevrolet dealership.

4. In 2005, Menendez cold-called KLF, and after several conversations, persuaded him to open a brokerage account at Salomon Grey Financial Services. At the time, KLF's investing experience was limited to the mutual funds that he held in his I.R.A.

5. In March 2006, Menendez asked, and KLF agreed, to transfer his account to Westpark. KLF's annual income was about \$55,000.00 per year and he had virtually no liquid assets; his brokerage account had been funded with money borrowed from his home equity line of credit.

6. One month later, in April 2006, Menendez persuaded KLF to open a margin account even though he had no previous margin experience. Menendez told KLF that the use of margin would increase his returns. But he never discussed the costs and risks involved in purchasing securities on margin. On April 30, 2006, KLF's Westpark Account had a Net Portfolio Value of \$13,918.18.

7. Menendez controlled KLF's account. He chose what securities to buy and sell, when those transactions would occur, and how much KLF would be charged for those transactions. KLF had little understanding of what was transpiring in his account, and in particular did not understand what he was being charged for account transactions.

8. When Menendez telephoned with recommendations to purchase securities, he frequently told KLF that he would need to deposit additional funds into his account even though KLF explained to him that the only funds he had available were those he had borrowed from his home equity line of credit. Between May 2006 and March 31, 2007, KLF deposited nearly \$70,000.00 into his account that had been borrowed from his home equity line of credit.

9. From May 1, 2006 through March 31, 2007, Menendez caused 37 transactions to be executed (18 purchases and 19 sales) in KLF's account. On at least 18 occasions, Menendez mischaracterized "solicited" trades as "unsolicited" on order tickets. The 18 mismarked trades in KLF's account are as follows:

No.	Date	Security	Commission	Buy (B) or Sell (S)
1	6/15/06	NUAN	0.00 c	S
2	8/16/06	CTIC	125.00 c	S
3	8/16/06	NUAN	500.00 c	S
4	8/16/06	PPHM	150.00 c	S
5	8/24/06	CTIC	150.00 c	B
6	9/6/06	CTIC	200.00 c	B
7	10/9/06	CTIC	0.00 c	S

No.	Date	Security	Commission	Buy (B) or Sell (S)
8	10/9/06	CTIC	100.00 c	S
9	11/30/06	CAMT	99.98 c	S
10	12/20/06	F	65.00 c	B
11	1/12/07	NUAN	500.00 c	B
12	1/23/07	F	250.00 c	S
13	1/29/07	PRB	1,000.00 c	B
14	2/7/07	NUAN	600.00 c	S
15	2/12/07	PRB	20.00 c	S
16	2/15/07	PRB	25.01 c	S
17	2/28/07	IACI	100.00 c	S
18	2/28/07	PRB	71.25 c	S

10. Although KLF had no experience with riskless principal trading, never discussed principal trading with Menendez, and had never heard of the terms “markup” or “markdown,” Menendez executed trades in KLF’s account on both an agency and a principal basis. Seven of the 37 trades were executed on a principal basis, including five of the six highest cost transactions, involving markups and markdowns ranging between \$1,000.00 and \$2,500.00 per transaction. Those six trades are identified on the following table:

Date	Security	Net Amount	Comm. (c) or Markup Amount (m)	Buy (B) or Sell (S)
10/9/06	AMKR	35,452.00	1,350.00 m	B
11/10/06	AMKR	40,796.69	1,600.00 m	S
11/13/06	CAMT	44,977.00	1,875.00 m	B
11/30/06	AMKR	42,918.80	1,000.00 m	B
2/7/07	AMKR	45,274.93	1,575.09 c	S
2/8/07	CHINA	56,251.50	2,500.00 m	B

11. Between May 1, 2006 and March 31, 2007, the total trading costs, including commissions, markups, margin interest charges, and handling fees amounted to \$23,469.43. On an annualized basis, the turnover rate was 15.44 and the cost-to-equity ratio was 100%. That is

to say, KLF's account would have had to appreciate 100% annually just to break even. By March 31, 2007, KLF had sustained a \$28,345.27 loss in his Westpark account.

IV. CUSTOMER RC'S ACCOUNT

12. Customer RC, born in [REDACTED] is 83 years old and resides in Asheville, North Carolina. He primarily did kitchen remodeling and installation work before his retirement in 1988. His income is about \$40,000.00 per year consisting of social security and investment income. His liquid net worth is less than \$200,000.00.

13. In 2005, Menendez cold-called RC, and persuaded him to open a brokerage account at Salomon Grey. Several months later, in March 2006, Menendez telephoned RC, told him that he had moved to Westpark, and asked him to transfer his account. RC's account was worth about \$50,500 when he transferred it to Westpark later that month.

14. Menendez controlled RC's account. He recommended all of the transactions and RC relied on his recommendations. Although RC had not heard of the securities that Menendez recommended, he nonetheless always followed his advice. Menendez determined what securities to purchase and sell, when those transactions would be effected, and what the cost would be. Menendez never discussed with RC what he would be charged and RC did not understand what he was paying for account transactions.

15. In November 2006, after his account had diminished by about \$25,000, RC telephoned Menendez intending to close his account, but Menendez convinced him to keep the account open. By the end of March 2007, RC's account was worth about \$20,000.00.

16. There were 43 transactions in RC's account (14 purchases and 29 sales) from May 3, 2006 through February 26, 2007. Although all of the transactions were solicited,

Menendez mischaracterized 29 of the 43 transactions as “unsolicited” on order tickets. The mismarked trades are as follows:

No.	Date	Security	Commission (c)/Markup (m)	Buy (B) or Sell (S)
1	5/3/06	WIT	100.00 c	S
2	5/31/06	XXIA	100.00 c	S
3	6/12/06	DCNAQ	500.00 c	S
4	6/21/06	THOR	500.00 c	S
5	6/22/06	NUAN	500.00 c	B
6	7/31/06	DCNAQ	100.00 c	S
7	7/31/06	WIT	250.00 c	S
8	8/2/06	CSCX	25.00 c	S
9	8/2/06	PPHM	250.00 c	S
10	8/2/06	TGALD	25.00 c	S
11	8/2/06	THOR	150.00 c	S
12	8/7/06	PPHM	160.00 c	S
13	8/15/06	BBJ	0.00 c	B
14	8/15/06	BBJ	80.00 c	B
15	8/16/06	F	750.00 c	B
16	8/16/06	PMU	75.00 c	S
17	8/18/06	F	100.00 c	S
18	8/18/06	MSFT	100.00 c	S
19	9/11/06	PDSN	65.00 c	S
20	9/19/06	INCY	0.00 c	S
21	9/25/06	INCY	65.00 c	S
22	9/29/06	CAMT	100.00 c	S
23	9/29/06	INCY	0.00 c	S
24	9/29/06	INCY	500.05 c	S
25	9/29/06	PDSN	99.98 c	S
26	10/31/06	CTIC	65.00 c	S
27	12/29/06	NUAN	100.00 c	S
28	2/2/07	IACI	100.00 c	S
29	2/26/07	AMKR	65.02 c	S

17. Although RC had no experience with principal trading and had never heard of the terms “markup” or “markdown”, Menendez executed two trades on a riskless principal basis. On one of those occasions (a purchase of 3,500 shares of Amkor Technology (“AMKR”)), Menendez charged RC a \$1,750.00 markup. In fact, on six occasions, Menendez charged RC between \$1,750.00 and \$2,100.00 per trade for highly liquid exchange traded stocks. The following table identifies those trades:

Date	Security	Comm. (c) or Markup Amount (m)	Buy (B) or Sell (S)
7/25/06	MSFT	2,000.00 c	B
8/18/06	INCY	1,909.40 c	B
10/30/06	TYL	2,100.00 c	S
12/29/06	IACI	2,000.00 c	B
2/2/07	AMKR	1,750.00 m	B
2/26/07	LVLIT	1,750.00 c	B

18. Between May 1, 2006 and March 31, 2007, the total trading costs, including commissions, markups, margin interest charges, and handling fees amounted to \$24,459.38. On an annualized basis, the turnover rate was 12.29 and the cost-to-equity ratio was 81%. That is to say, RC's account would have had to appreciate 81% annually just to break even. By March 31, 2007, RC sustained a \$34,326.31 loss in his Westpark account.

V. CUSTOMER CT'S ACCOUNT

19. Customer CT, born in [REDACTED] is 67 years old and has been employed as a medical researcher in San Francisco, CA for over 30 years.

20. Menendez initially cold called CT in February 2005, while he was associated with LH Ross & Co, Inc. and persuaded him to open an account. CT transferred his account after Menendez associated with Salomon Grey in March 2005. CT transferred his account again in March 2006 after Menendez associated with Westpark. At the end of April 2006, CT's Westpark account had a Net Portfolio Value of \$101,557.33.

21. On or about May 1, 2006, Menendez and CT had a discussion about what the charges would be for account transactions in CT's Westpark account. CT was unhappy about the losses he had sustained at LH Ross and Salomon Grey and wanted the transaction costs to be reduced. Among other things, he and Menendez agreed that the commission charged on

purchases would not exceed one percent of the sales price. They never discussed principal trading and CT had no understanding or familiarity with “markups” or “markdowns.”

22. Between August 23, 2006 and December 18, 2006, Menendez executed 23 transactions in CT’s account. Although all of the trades were “solicited,” Menendez mischaracterized 16 of the 23 transactions as “unsolicited” on order tickets. The mismarked trades are as follows:

No.	Date	Security	Commission (c)/ Markup (m)	Buy (B) or Sell (S)
1	5/10/06	WIT	0.00 c	S
2	5/12/06	WIT	65.00 c	S
3	5/12/06	WIT	0.00 c	S
4	5/19/06	THOR	100.00 c	S
5	6/9/06	WIT	0.00 c	S
6	6/13/06	WIT	100.00 c	S
7	8/22/06	GRIL	99.98 c	S
8	8/22/06	THOR	100.00 c	S
9	8/22/06	WIT	100.00 c	S
10	9/27/06	UARM	6,000.00 m	S
11	9/28/06	NVDA (short sale)	5,500.00 c	S
12	10/12/06	NVDA (cover short)	100.00 c	B
13	11/16/06	NUAN	100.00 c	S
14	11/17/06	NUAN	0.00 c	S
15	11/27/06	NUAN	0.00 c	S
16	12/7/06	NUAN	65.00 c	S

23. Notwithstanding their agreement to limit transaction charges and even though Menendez never discussed trading on a principal basis, Menendez executed riskless principal trades in which the markups or markdowns ranged between \$1,000.00 and \$6,000.00 per transaction. Those transactions are listed below:

Date	Security	Net Amount	Commission (c)/ Markup (m)	Buy (B) or Sell (S)
8/23/06	UARM	109,089.79	4,050.00 m	B
9/27/06	UARM	119,944.13	6,000.00 m	S
10/12/06	CAMT	33,477.00	1,250.00 m	B
10/31/06	NUAN	71,992.00	3,000.00 m	B
12/18/06	CAMT	28,005.10	1,000.00 m	S
12/18/06	NUAN	48,294.78	1,072.50 m	S

24. In January 2007, CT directed Westpark to close his account. By January 31, 2007, he had sustained a \$72,229.36 loss.

VI. FAILURE TO PROVIDE DOCUMENTS AND TESTIMONY

A. Failure to Appear for Testimony

25. In connection with an ensuing investigation into Menendez's misconduct in customer accounts, on September 7, 2007, the staff, pursuant to Rule 8210, requested that Menendez appear for on-the-record testimony ("OTR") at FINRA's New York office at One Liberty Plaza, on November 12 and 13, 2007. That request was sent by first class and certified mail to Menendez's CRD residential address, [REDACTED]. The notice sent by first class mail was not returned. The notice sent by certified mail was returned marked "Refused By Addressee."

26. In the first week of November 2007, the staff left three telephone messages with Menendez reminding him to appear for testimony on November 12 and 13, 2007. But Menendez never responded to any of those telephone calls. On November 5, 2007, the staff notified the Compliance Director at the firm with which Menendez was associated that Menendez was scheduled for OTR testimony on November 12 and 13, 2007. Several days later, an attorney contacted the staff, stated that he had been retained to represent Menendez, requested that the

OTR be rescheduled, and agreed that Menendez would appear for testimony at 8:00 a.m. on December 13 and 14, 2007 at FINRA's One Liberty office.

27. On December 13, 2007, Menendez and his counsel arrived late at the One Liberty office and consequently the OTR commenced at 10:45 a.m. At about 4:20 p.m. Menendez stated that he would be unable to return to complete his testimony on the following day but agreed that the OTR would resume at a mutually agreed time.

28. Throughout March 2008 and early April 2008, the staff unsuccessfully attempted to arrange dates for the resumption of the OTR:

- On March 10, the staff inquired about resuming the OTR during the week of May 12, 2008. On March 11, 2008, Menendez's counsel informed the staff that the week of May 12, 2008 was unacceptable because of his pre-existing commitment on another matter.
- Later in the day on March 11, 2008, the staff inquired about resuming the OTR on April 16 and 17, 2008. Menendez's counsel promptly informed the staff that he would be "out of the country from April 13-30 (in China) . . ."
- On March 24, 2008, the staff proposed that the OTR resume on any days of counsel's choosing on either May 28-30, 2008 or June 3-6, 2008. Menendez's counsel responded that these days were acceptable and that he would speak to the staff after he cleared dates with Menendez.
- On March 31, 2008, the staff inquired again about the proposed dates. Menendez's counsel responded that he had not heard back from his client about the proposed dates but would follow-up that day.

- On April 2, 2008, the staff again inquired again of Menendez's counsel as to whether he could confirm a date to resume the OTR.

29. Menendez's counsel never agreed to any of the proposed dates and never suggested any other dates to resume the OTR. Accordingly, on May 12, 2008, the staff, pursuant to Rule 8210, sent requests by first class and certified mail to Menendez CRD residential address directing him to appear for an OTR on July 29 and 30, 2008 at FINRA's One Liberty office. The letter sent by first class mail was not returned. The letter sent by certified mail was returned marked "Return to Sender Unclaimed Unable to Forward."

30. On May 20, 2008, Menendez's counsel sent the staff an email confirming that he no longer represented Menendez. He wrote, "I have made several efforts to contact him and have not received a response. You should direct all correspondence to him directly."

31. Later that day, in order to ensure that Menendez was aware of his scheduled OTR, the staff contacted the Chief Compliance Officer at the firm with which Menendez was associated and advised him that Menendez was obligated to appear for an OTR on July 29, 2008.

32. On July 21, 2008, Menendez telephoned the staff and confirmed that he would appear for testimony on July 29, 2009.

33. On July 29, 2008, Menendez failed to appear for his OTR. Approximately mid-morning on that day, Menendez left a voicemail message with the staff stating that transportation problems prevented him from appearing for his OTR that morning. Later that morning, the staff reached Menendez by telephone and he agreed to appear for an afternoon session of his OTR. Notwithstanding his agreement, Menendez failed to appear.

34. Late in the afternoon on July 29, 2008, the staff contacted the Chief Compliance Officer at the firm with which Menendez was associated to enlist his assistance in ensuring Menendez's appearance on July 30, 2008.

35. On July 30, 2008, Menendez, once again, failed to appear for his OTR at FINRA's One Liberty office. Approximately two hours after the OTR was scheduled to begin, the staff received a voicemail message from Menendez requesting an opportunity to testify at some other unspecified date and time.

36. On August 15, 2008, the staff pursuant to Rule 8210, sent requests by first class and certified mail to Menendez at his business address (Itradedirect.com, 701 Middle Country Road, Selden, New York 11784) directing him to appear for his OTR at 10:00 am on September 24, 2008 at FINRA's Los Angeles office. The letter also asked him to contact the staff by September 15, 2007 to confirm his attendance. The letter sent by first class mail was not returned. The return receipt for the letter sent by certified mail was returned with the signature "Deirdre Catania" and dated August 18, 2008.

37. Menendez never contacted the staff to confirm his attendance and then failed to appear for his OTR on September 24, 2008.

38. On September 25, 2008, the staff received a faxed letter from Menendez, backdated September 22, 2008. The letter stated, "I hereby request an immediate postponement [sic] As I am still in dire straits financially. Please grant me this final and last extension."

39. The staff has not had any further communication with Menendez.

B. Failure to Produce Documents

40. On January 8, 2008, the staff, pursuant to Rule 8210, sent Menendez, through his counsel, a request for certain order tickets for transactions involving certain Islandia Branch customers occurring between May 1, 2006 and March 31, 2007. The request asked for production of responsive documents no later January 22, 2008.

41. On January 18, 2008, the staff, pursuant to Rule 8210, sent Menendez, through counsel, a request for certain additional categories of documents including records created by two Islandia Branch representatives between May 2006 and March 2007, settlement agreements entered between May 2006 and March 31, 2007, emails between Westpark customers and Menendez' personal email address for the period May 2006 through March 31, 2007, and Islandia Branch telephone bills for calls made between November 5, 2006 and December 4, 2006.

42. Menendez never responded to either the January 8, 2008 or the January 18, 2008 document requests. On March 3, 10, 31 and April 2, 2008, the staff sent Menendez's counsel emails inquiring about the requests because Menendez had not produced any responsive documents nor had he otherwise responded to the requests. Menendez never responded in any manner to the requests and no documents were ever produced.

FIRST CAUSE OF ACTION
(Unsuitably Excessive Trading in Customer KLF's Account)
(NASD Conduct Rules 2310 and 2110 and IM-2310-2)

43. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 11.

44. Menendez did not have a reasonable basis for believing that the volume of transactions he recommended and effected was suitable for KLF in light of the information known to him about KLF's financial circumstances and needs and his investment objectives.

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

SECOND CAUSE OF ACTION
(Churning in Customer KLF's Account)
(Exchange Act Section 10(b), Rule 10b-5 and NASD Rules 2120 and 2110)

46. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 11.

47. In connection with the purchase and sales of securities in KLF's account, Menendez directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, knowingly or recklessly: employed devices, schemes or artifices to defraud; and engaged in acts, practices, or courses of business which operated as a fraud or deceit upon KLF. He purchased and sold securities for KLF's account without regard for KLF's investment interests, for the purpose of generating commissions.

48. Menendez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and violated NASD Conduct Rules 2120 and 2110.

THIRD CAUSE OF ACTION
(Unsuitably Excessive Trading in Customer RC's Account)
(NASD Conduct Rules 2310 and 2110 and IM-2310-2)

49. The Department of Enforcement realleges and incorporates by reference paragraphs 1, 2, and 12 through 18.

50. Menendez did not have a reasonable basis for believing that the volume of transactions he recommended and effected was suitable for RC in light of the information known to him about RC's financial circumstances and needs and his investment objectives.

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

FOURTH CAUSE OF ACTION
(Churning in Customer RC's Account)
(Exchange Act Section 10(b), Rule 10b-5 and NASD Rules 2120 and 2110)

52. The Department of Enforcement realleges and incorporates by reference paragraphs 1, 2, and 12 through 18.

53. In connection with the purchase and sales of securities in RC's account, Menendez directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, knowingly or recklessly: employed devices, schemes or artifices to defraud; and engaged in acts, practices, or courses of business which operated as a fraud or deceit upon RC. He purchased and sold securities for RC's account without regard for RC's investment interests, for the purpose of generating commissions.

54. Menendez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and violated NASD Conduct Rules 2120 and 2110.

FIFTH CAUSE OF ACTION
(Causing Westpark's Books and Records to Be Inaccurate by Falsely Characterizing Trades in Customer Accounts as "Unsolicited")
(NASD Conduct Rules 3110 and 2110)

55. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 24.

56. Exchange Act Rule 17a-3 requires broker-dealers to maintain a memorandum of each brokerage order for the purchase or sale of securities. In turn, NASD Conduct Rule 3110

requires firms to maintain books and records as prescribed by Exchange Act Rule 17a-3. By mischaracterizing solicited trades as “unsolicited” in KLF’s, RC’s, and CT’s accounts, Menendez caused Westpark’s books and records to be inaccurate.

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

SIXTH CAUSE OF ACTION
(Failure to Appear For On-The-Record Testimony and Failure to Provide Requested Information and Documents)
(NASD Rule 8210 and Conduct Rule 2110)

58. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 42.

59. By repeatedly failing to appear for testimony and failing to respond in any manner to the document requests dated January 8 and 18, 2008, 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;
- 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; and

- C. make specific findings that Respondent Menendez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 13, 2010


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