

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY D. GUCKERT
(CRD No. 3097226),

Respondent.

Disciplinary Proceeding
No. 2007008174801

DEFAULT DECISION

Hearing Officer – SW

Dated: November 24, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information from the FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210. No separate sanction is imposed on Respondent for engaging in unethical conduct, in violation of Conduct Rule 2110.

Appearances

Noel C. Downey, Esq., Principal Regional Attorney, Woodbridge, NJ, for
the Department of Enforcement.

No appearance by or for Jeffrey D. Guckert.

DECISION

I. Introduction

On July 25, 2008, the FINRA Department of Enforcement (“Enforcement”) filed the attached two-count Complaint against Respondent Jeffrey D. Guckert (“Respondent”). The first count of the Complaint alleges that, while associated with FINRA member MetLife Securities, Inc. (“MetLife” or the “Firm”), Respondent engaged in unethical conduct in violation of Conduct Rule 2110. Specifically, count one of the Complaint alleges that, contrary to an oral agreement to provide MetLife financial services to customer MF for two years for \$1,200, Respondent: (i) failed to deposit customer MF’s \$1,200 check payable to MetLife into MetLife’s account; (ii) took

possession of MF's funds by endorsing and depositing the customer check into an unknown account; and (iii) provided only three months of financial services to MF before resigning from the Firm without further notice to the customer and without reimbursing the customer. The second count of the Complaint alleges that Respondent failed to respond to requests for information, issued by the FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210.

On October 17, 2008, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Noel C. Downey, Esq., Principal Regional Attorney in FINRA's Woodbridge, NJ office, and three exhibits. For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On July 25, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first-class mail, at his last known residential address shown in the Central Registration Depository ("CRD address") and at an alternate address obtained by the FINRA staff via an internet search. On August 26, 2008, Enforcement served the Complaint and Second Notice of Complaint on Respondent, via certified and first-class mail, at his CRD address and the alternate address. Respondent failed to file an Answer to the allegations of the Complaint.

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address.¹ Accordingly, the

¹ See *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.²

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with MetLife as an investment company and variable contracts products representative on August 19, 1998, and as a general securities representative on February 24, 1999, until his termination on December 31, 2005. MetLife filed a Form U5 amendment on behalf of Respondent on February 21, 2007, following an internal investigation in which MetLife determined that Respondent engaged in misconduct.³ Respondent is not currently associated with a FINRA member firm.

Nevertheless, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws, because the Complaint charges Respondent with misconduct while he was registered with a FINRA member firm and with failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction, and the Complaint was filed during the two-year period following the last amendment to his notice of termination of registration.⁴

² The factual determinations in this Decision are based on the Motion for Entry of Default Decision, the Declaration in Support of the Motion, the exhibits attached thereto, and the allegations in the Complaint, deemed admitted pursuant to Rules 9215(f) and 9269, and *Notice to Members* 99-77 (Sept. 1999).

³ The Form U5 amendment disclosed an internal investigation, in which MetLife found that Respondent had negotiated two checks for a total of \$4,200 obtained from two customers as fees for financial planning services that they never received.

⁴ Article V, Section 4(a) of the FINRA By-Laws creates a two-year period of retained jurisdiction over former registered persons, covering misconduct that began before the registration terminated and failure to provide information, requested pursuant to Rule 8210, during the period of retained jurisdiction. Article V, Section 4(a) also provides that the running of the two year period of retained jurisdiction recommences from the date of the filing of an amended Form U5, if the amended Form U5 (i) is filed within two years of the original Form U5 filing, and (ii) discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation.

B. Respondent Engaged in Unethical Conduct

The first cause of the Complaint alleges that while registered with MetLife, Respondent promised in an oral agreement to provide a MetLife financial service plan to customer MF for two years (2005-2006). Instead of complying with the terms of the agreement and forwarding the check to the MetLife corporate office, Respondent endorsed the check by signing his name on the back and then deposited the check into an unknown account without forwarding any funds to MetLife. Respondent provided some financial planning advice to MF for a three-month period until May 2005. On December 31, 2005, Respondent resigned from MetLife. From May 2005 through December 2006, Respondent failed to provide the agreed upon services to MF and failed to return any of the \$1,200 paid by MF for the agreed upon services.

Conduct Rule 2110 states, “[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”⁵ Because Conduct Rule 2110 “is not limited to rules of legal conduct but rather . . . it states a broad ethical principle,”⁶ it may be violated by unethical conduct, independent of a violation of any other law, regulation, or rule.

Respondent acted unethically when he failed to deal fairly with customer MF by: (i) failing to provide the financial services as agreed; (ii) failing to disclose to MF that he was leaving MetLife and would not be providing the services; and (iii) failing to return any of the \$1,200 paid by MF for the agreed upon services.⁷

⁵ Although Rule 2110 refers only to members, Rule 0115 provides: “Persons associated with a member shall have the same duties and obligations as a member under these Rules.”

⁶ *Timothy L. Burkes*, 51 S.E.C. 356 (1993), *aff’d mem.*, *Burkes v. SEC*, 29 F.3d 630 (9th Cir. July 24, 1994).

⁷ Customer MF was reimbursed by MetLife.

The allegations in the first cause of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent violated Conduct Rule 2110 by engaging in unethical conduct.

C. Respondent Failed to Respond to Rule 8210 Requests for Information from FINRA

The FINRA staff commenced an investigation of Respondent after MetLife filed an amendment to Respondent's Form U5, which revealed possible misconduct by Respondent. The second cause of the Complaint alleges that Respondent failed to respond to written requests for information issued to Respondent to obtain information concerning Respondent's dealing with customer MF and MF's \$1,200 check.

Specifically, on April 2 and 24, 2007, the FINRA staff sent requests for information, via certified and first-class mail, in accordance with Procedural Rule 8210, to Respondent at his CRD address.⁸

On June 29, 2007, the FINRA staff sent another request for information to Respondent at his CRD address, via certified mail, and at the alternate address, via certified and first-class mail, in accordance with Procedural Rule 8210. Respondent failed to respond to any of the requests for information.

The Hearing Officer finds that Respondent is deemed to have received the three requests for information sent to his CRD address pursuant to Rule 8210(d). Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.⁹

⁸ On April 27, 2007, the FINRA staff also sent a request for information to Respondent at the alternate address, but not at the CRD address.

⁹ See, e.g., *Richard J. Rouse*, Exch. Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 as alleged in the second cause of the Complaint.

IV. Sanctions

A. Respondent Failed to Respond to Rule 8210 Requests for Information

For failing to respond to the requests for information issued by the FINRA staff pursuant to Rule 8210, as alleged in count two of the Complaint, the *FINRA Sanction Guidelines* recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹⁰ Here, the record discloses no mitigating factors. Accordingly, a bar is the appropriate sanction for the violation set forth in the second cause of the Complaint.

B. No Separate Sanction Imposed for Respondent's Unethical Conduct

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanction for Respondent's violation of Conduct Rule 2110 when he engaged in unethical conduct by failing to provide financial services as agreed and failing to reimburse customer MF for the services that were not provided.

V. Order

Respondent Jeffrey D. Guckert is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information issued by the FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210. The bar will become effective immediately if this Default Decision becomes FINRA's final

¹⁰ *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

disciplinary action in this proceeding.

Sharon Witherspoon
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
November 24, 2008

Copies to:

Jeffrey D. Guckert (via FedEx and first-class mail)
Noel C. Downey, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic and first-class mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

JEFFREY DAVID GUCKERT
(CRD No. 3097226),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2007008174801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In February 2005, customer MF delivered to Respondent Jeffrey David Guckert a \$1,200 check payable to MetLife Securities Inc. (MetLife) pursuant to a verbal agreement between Guckert and MF, wherein Guckert promised to provide a MetLife financial services plan to MF for two years (2005 through 2006). Instead of following the terms of their agreement and forwarding the check to the MetLife corporate office, Guckert took possession of MF's funds, personally endorsing the check by signing his name on the back and then depositing it into an unknown account without forwarding any funds to MetLife. Thereafter, Guckert provided some limited financial planning advice to MF but for only a three-month period. In addition, Guckert failed to respond to FINRA staff's written requests for

information. This conduct was in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

2. Guckert first became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) through MetLife on August 19, 1998 as an Investment Company and Variable Contracts Products Representative (Series 6). Thereafter, from February 24, 1999 to December 31, 2005, Guckert was registered as a General Securities Representative (Series 7) through MetLife. Following his termination from MetLife in December 2005, Guckert has not become associated with any member firm.
3. On December 21, 2005, MetLife filed a Form U5 on Guckert's behalf noting his voluntary termination date of December 31, 2005. On February 21, 2007, MetLife filed a Form U5 amendment citing an internal investigation report finding that Guckert had negotiated two checks for a total of \$4,200 from two customers for financial planning fees for which they never received appropriate services. Based on that amendment, FINRA retains jurisdiction over Guckert for the purposes of this Complaint pursuant to Article V, Section 4 of the FINRA By-Laws until at least February 20, 2009. Moreover, the misconduct alleged in the First Cause of Action below occurred while Guckert was associated with MetLife and the misconduct alleged in the Second Cause of Action below occurred within two years of Guckert's termination date and of the February 21, 2007 amended Form U5.

FIRST CAUSE OF ACTION
Obtaining Funds Through False Pretenses
(NASD Conduct Rule 2110 and IM-2310-2)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. From June 2000 through February 2005, Guckert was customer MF's representative at MetLife.
6. On or about February 2005, MF was interested in purchasing financial planning services from MetLife through Guckert. To that end, Guckert provided MF with a detailed written summary of services provided by MetLife, entitled: "*Client Relationship Options for Financial Planning Services*." The summary explained the parameters of the services to be provided by MetLife through Guckert for a fee of \$1,200.
7. On or about February 14, 2005, MF and Guckert entered into an oral agreement, wherein Guckert promised to provide MF with two years worth of MetLife financial planning services for all of 2005 and 2006 in exchange for a fee of \$1,200.
8. On February 14, 2005 and pursuant to their agreement, MF forwarded to Guckert a \$1,200 check made payable to "*MetLife Securities*." In the memo portion of the check, MF wrote "*2005-2006 Financial Advisor Planning*."
9. Guckert, however, did not comply with the terms of their agreement. He did not submit the check to MetLife. Instead, on February 22, 2005, Guckert personally endorsed the check by signing his name to the back and then deposited it into an unknown account. The \$1,200 was not given to MetLife. Moreover, Guckert

never provided the firm with any funds relating to financial planning services for MF.

10. From February 2005 to May 2005, and ostensibly pursuant to their agreement, Guckert provided some financial planning advice to customer MF.
11. On December 31, 2005, however, Guckert resigned from MetLife and thereafter ceased to provide financial planning advice to customer MF. Guckert did not communicate his resignation from MetLife to MF and did not provide any closure or assurances to MF regarding their MetLife financial planning services agreement. Thus, from May 2005 through December 2006, Guckert failed to provide the agreed upon services to MF. Moreover, Guckert failed to return any of the \$1,200 paid by MF for the agreed upon services.
12. By obtaining the check under false pretenses, wherein he promised to provide two years of MetLife financial planning services but then misappropriating the \$1,200 check intended for MetLife and only provided three months of the agreed upon financial planning, Guckert violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Failure to Respond to Written Requests for Information (NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. On April 2, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff (staff) sent a letter to Guckert requesting information concerning his dealings with customer MF and the \$1,200 check. The letter, which requested a response by April 16, 2007, was sent by first class and certified mail to Guckert's last known

residential address as reflected in the records of FINRA's Central Registration Depository, [REDACTED] (CRD Address). The certified envelope was returned to the staff as "ANK," meaning address not known. The first class letter was returned to staff as "RETURN TO SENDER ATTEMPTED - NOT KNOWN UNABLE TO FORWARD." Guckert therefore failed to respond.

15. On April 24, 2007 and pursuant to NASD Procedural Rule 8210, the staff again sent a letter to Guckert requesting the same information asked for in the April 2, 2007 correspondence, which was attached as a reference, regarding his dealings with customer MF and the \$1,200 check. The April 24 letter, which requested a response by May 8, 2007, was sent by first class and certified mail to Guckert's CRD Address. Further, the letter advised Guckert that if he failed to respond, he may be subject to disciplinary action. The certified envelope was returned to the staff as "ANK" and "UNCLAIMED" on May 2, 2007. Further, the first class letter was returned to staff as "RETURN TO SENDER ATTEMPTED - NOT KNOWN UNABLE TO FORWARD" on May 9, 2007. Guckert therefore failed to respond.

16. On April 27, 2007 and pursuant to NASD Procedural Rule 8210, the staff sent a letter to Guckert requesting the same information regarding his dealings with customer MF and the \$1,200 check. The letter, which requested a response by May 11, 2007, was sent by first class and certified mail to [REDACTED] [REDACTED] Pearl Street Address), a possible alternative address for Guckert identified by staff through *Zabasearch.com* - an internet search

engine. The first class letter was returned to staff as "ANK" and "RETURN TO SENDER ATTEMPTED – NOT KNOWN UNABLE TO FORWARD" on May 7, 2007. Further, the certified envelope was returned to the staff as "ANK" and "UNCLAIMED" on May 21, 2007. Guckert therefore failed to respond.

17. On June 29, 2007 and pursuant to NASD Procedural Rule 8210, the staff sent another letter to Guckert requesting that he provide the same information asked for in the April 27, 2007 correspondence, which was attached as a reference, regarding his dealings with customer MF and the \$1,200 check. The letter, which requested a response by July 13, 2007, was sent by first class and certified mail to his [REDACTED] Pearl Street Address and by certified mail to his CRD Address. Further, the letter advised Guckert that if he failed to respond, he may be subject to disciplinary action. The first class letter sent to the [REDACTED] Pearl Street Address was returned to the staff marked "ANK" and "RETURN TO SENDER ATTEMPTED – NOT KNOWN UNABLE TO FORWARD" on July 11, 2007. Further, the certified envelope sent to the [REDACTED] Pearl Street Address was returned to the staff as "RETURNED TO SENDER ATTEMPTED NOT KNOWN" on July 16, 2007. Finally, the certified envelope sent to the CRD Address was returned to the staff as "UNCLAIMED" on July 24, 2007. Guckert therefore failed to respond.
18. The staff is not aware of a more current residential address or business address for Guckert.
19. By failing to respond to the written requests for information, Guckert violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

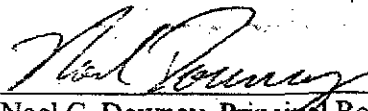
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

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

FINRA DEPARTMENT OF ENFORCEMENT

Dated: July 25, 2008


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