

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

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REGISTRATION & DISCLOSURE

Department of Enforcement,
Complainant,

v.

Eric Skigen,
CRD No. 2543576,

Respondent.

Disciplinary Proceeding
No. 2007008549101

Hearing Officer – MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: April 20, 2009

INTRODUCTION

Disciplinary Proceeding No. 2007008549101 was filed on November 19, 2008, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Eric Skigen submitted an Offer of Settlement (Offer) to Complainant on March 30, 2009. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of

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findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

On October 5, 1994, Skigen first became registered with FINRA as a General Securities Representative. On August 18, 2000, Skigen obtained his General Securities Sales Supervisor Licenses (Series 9 and Series 10). From March 30, 2001 through March 14, 2005, Skigen was registered in those same capacities through Morgan Stanley DW, Inc. (the firm). During this time, Skigen worked in the firm's branch offices in Maryland.

On March 15, 2005, the firm filed an initial Form U5 reporting Skigen's voluntary termination from the firm, effective March 14, 2005. On April 29, 2005, the firm filed an amended Form U5 reporting that it had permitted Skigen to resign and disclosing that Skigen "was under internal review concerning the issue of whether Mr. Skigen's notes relating to a client were contemporaneous and accurate and his representations concerning this issue."

Since June 27, 2005, Skigen has been registered through another member firm. Accordingly, he remains subject to FINRA's jurisdiction.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

OVERVIEW

1. In 2004, customer R.G. filed an arbitration claim against Respondent Eric Skigen's then employer member firm alleging that he had engaged in fraudulent

conduct in the customer's brokerage accounts. Thereafter, Skigen created falsified electronic notes of his purported conversations with R.G. from May 2001 to March 2004. Skigen backdated the notes and wrote them in the present tense to convey the false impression that they had been written contemporaneously with the purported conversations. The notes contained false information describing the purported conversations. Skigen provided the notes to his firm's outside counsel in the arbitration, without advising counsel or the firm that he had falsified and backdated them. Instead, Skigen repeatedly misrepresented to outside counsel that the notes had been prepared contemporaneously with the conversations. It was not until R.G.'s counsel challenged the notes that Skigen admitted, upon persistent questioning from the firm, that the notes had not been prepared contemporaneously.

2. At or about the same time he created backdated and falsified notes in connection with the arbitration filing, Skigen created similar notes relating to customer M.K. On June 26, 2005, M.K. filed an arbitration claim against Skigen and Skigen's former employer member firm, alleging various securities law violations. Skigen's former employer member firm provided those backdated notes to M.K. during discovery. M.K. subsequently filed a motion challenging the notes and seeking to review the firm's computer records. Skigen, who at the time was registered with another firm, was aware of this dispute and the challenge to his notes. Nevertheless, he did not advise his former employer member firm, its outside counsel, or claimant's counsel until June 30, 2006, almost one year after the arbitration was filed, that his notes were not contemporaneous.

3. During an on-the-record interview (OTR) with FINRA staff in January 2006, Skigen provided false and misleading testimony concerning the matters discussed above.

**Falsification of Documents - Customer R.G.
(NASD Conduct Rule 2110)**

4. On or about March 22, 2004, customer R.G. filed an arbitration claim against Skigen's then employer member firm alleging that, between June 1999 and August 2003, Skigen had committed securities fraud in connection with his brokerage accounts. Among other things, the Statement of Claim alleged that Skigen had improperly managed and hedged R.G.'s accounts, which contained large positions in the stock and options of R.G.'s former employer.
5. After the arbitration claim was filed, Skigen created notes of purported meetings and conversations he had with customer R.G. from May 2001 to March 2004 (the R.G. notes).
6. Skigen drafted the notes on his work desktop computer utilizing ACT software, a database system that allows users to create and store notes and other information electronically. Skigen made 34 note entries for R.G., each accompanied by a date and time.
7. Because Skigen prepared the notes on his employer member firm's computer, they were accessible to the firm and to his branch manager. The firm's compliance procedures required that registered representatives maintain detailed records of conversations with customers.

8. Although he prepared the notes in 2004, Skigen inserted a date from May 9, 2001 to March 17, 2004, the period encompassed by the arbitration filing, on each one. He also wrote them in the present tense to further convey the false impression that the notes were prepared contemporaneously with the purported discussions with R.G.
9. In addition, Skigen's notes included several entries describing conversations that never occurred and/or falsely depicted R.G. as an investor actively involved in directing the decisions and strategy in his accounts. On the contrary, R.G. was not actively involved in his account and relied on Skigen for investment advice.
10. At the time he prepared the falsified notes, Skigen knew that he could be a potential witness in the R.G. arbitration.
11. In or about December 2004, Skigen gave the R.G. notes to M.M., his employer member firm's outside counsel in the R.G. arbitration. M.M. had requested Skigen's notes. The notes were subsequently provided to R.G.'s counsel in discovery.
12. Initially, Skigen informed M.M. and his employer member firm that the R.G. notes were prepared contemporaneously with the purported conversations. It was not until February 25, 2005, after R.G.'s counsel told M.M. that he could prove that R.G.'s notes were not prepared contemporaneously and were false, that Skigen informed his employer member firm that the notes had been backdated. Even then, Skigen falsely maintained that they were truthful and accurate.

**Misrepresentation
(NASD Conduct Rule 2110)**

13. On or about January and February 2005, Skigen had several discussions with M.M. in preparation for his testimony as a witness in the R.G. arbitration. During those sessions, M.M. explained to Skigen why the R.G. notes were important to the firm's defense to the arbitration and how they could be used during cross-examination.
14. During their various discussions, Skigen denied to M.M. that he had backdated or fabricated the R.G. notes. In fact, Skigen told M.M. that he had created the R.G. notes contemporaneously with the discussions described therein and that the entries were accurate. Those statements were false. As alleged above, Skigen prepared the R.G. notes shortly after the arbitration was filed in March 2004. Moreover, the substance of the notes was false.
15. In or about February 2005, R.G.'s counsel advised the firm and M.M. that he suspected the R.G. notes had been backdated and included false information.
16. On February 25, 2005, Skigen participated in a telephone conference call with M.M., his branch manager D.B., and his employer member firm's in-house counsel J.Y. (the February 2005 conference call) to discuss the allegation made by R.G.'s counsel. During this call, Skigen reaffirmed to M.M. and the other participants that he had prepared the notes contemporaneously with the discussions and that they were accurate. Again, this was false information.

**Falsification of Documents - Customer M.K.
(NASD Conduct Rule 2110)**

17. After the R.G. arbitration filing in March 2004, Skigen created backdated and falsified notes of purported meetings and conversations in 2001 with customer M.K. (the M.K. notes) and two other customers (E.K. and M) on his work desktop computer.
18. M.K. was a former work colleague of R.G.'s, who had referred him to Skigen. Similar to R.G., M.K. suffered losses in his brokerage account while it was under Skigen's management.
19. At the time he prepared the R.G. notes, Skigen was concerned that M.K. and other customers referred by R.G. could make similar allegations, so he also prepared backdated notes for those customers.
20. Skigen made 15 note entries for M.K., each accompanied by a date and time.
21. Although he prepared the notes in 2004, Skigen inserted a date from May 1, 2001 to October 19, 2001, the period that M.K. maintained an active account with him. He also wrote them in the present tense to further convey the false impression that the notes were prepared contemporaneously with the purported discussions with M.K.
22. In addition, Skigen's notes included several false entries describing conversations with M.K. that never occurred and falsely depicting M.K. as an investor actively involved in directing the decisions and strategy in his accounts. On the contrary, M.K. was not actively involved in his account and relied on Skigen for investment advice.

23. On or about July 26, 2005, M.K. filed an arbitration claim against Skigen's former employer member firm and Skigen alleging that Skigen had committed securities fraud in his accounts.
24. Among other things, the Statement of Claim alleged that Skigen had improperly managed and hedged M.K.'s accounts, which contained positions in the stock and options of M.K.'s former employer.
25. Skigen's former employer member firm provided his notes to M.K.'s counsel during discovery.
26. In April 2006, M.K.'s counsel filed motions with the arbitration panel challenging the timing and content of Skigen's M.K. notes and seeking to review Skigen's computer files to determine when the notes were prepared. This motion was opposed by Skigen's former employer member firm and was the subject of further litigation between the parties until the arbitration panel issued a final ruling on June 30, 2006, granting, among other things, M.K.'s motion to inspect all computers used by Skigen.
27. As a party to the arbitration, Skigen was aware of this controversy surrounding his notes. For almost a year after the arbitration was filed, Skigen failed to advise his former employer member firm, the firm's outside counsel, the arbitration panel, or claimant's counsel that the M.K. notes were false and had not been prepared contemporaneously.
28. Nevertheless, it was not until the arbitration panel's final ruling on June 30, 2006 that Skigen finally advised his former employer member firm that the M.K. notes

had been backdated. Even then, Skigen falsely maintained that they were truthful and accurate.

**False/Misleading Testimony
(NASD Procedural Rule 8210 and NASD Conduct Rule 2110)**

29. On January 31, 2006, Skigen appeared for an OTR before FINRA staff pursuant to NASD Procedural Rule 8210.
30. During his OTR, Skigen was questioned about his notes and R.G.'s allegations. Skigen provided false and misleading testimony on several issues.
31. For example, during his OTR, Skigen testified that, while he was working on the R.G. notes in his office, his (then) assistant branch manager, F.R., came by and asked him what he was working on. Skigen testified that he told F.R. that he was working on a "history" regarding the R.G. account. At F.R.'s request, Skigen gave him (F.R.) a copy of the notes. Skigen claimed that F.R. never told him what he planned to do with the notes.
32. This testimony was false. The conversation that Skigen described with F.R. regarding the R.G. notes never occurred. In fact, Skigen never gave the R.G. notes to F.R.
33. Skigen also testified that the firm first questioned him about the date of the R.G. notes during the February 2005 conference call.
34. This testimony was false. Throughout January and February 2005, M.M. questioned Skigen regarding when the R.G. notes were prepared. Skigen repeatedly (and falsely) responded to M.M. that he had prepared the notes contemporaneously with the purported conversations with R.G.

35. Skigen also testified that, during the February 2005 conference call, he explained to the call participants how he had prepared the R.G. notes.
36. This testimony was misleading. During the call, Skigen falsely represented to the call participants that he had prepared the R.G. notes contemporaneously with the purported conversations with R.G.
37. Finally, Skigen testified during the OTR that he had not prepared similar backdated notes of conversations with any other clients.
38. This testimony was also false. As alleged above, Skigen prepared backdated notes for M.K. and two other customers in 2005 after the R.G. arbitration was filed.

Based on the foregoing, Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred from association with any FINRA member in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read 'MJN', is written over a horizontal line.

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