

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Matthew T. McKinney
CRD No. 4516034,

Respondent.

Disciplinary Proceeding
No. 2007008624001

Hearing Officer: SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: March 18, 2009

INTRODUCTION

Disciplinary Proceeding No. 2007008624001 was filed on February 26, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant).

Respondent Matthew T. McKinney submitted an Offer of Settlement (Offer) to Complainant on March 12, 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

Matthew McKinney entered the securities industry in March 2002 as an associated person of ShareBuilder Securities Corporation ("SBSC"). From on or about January 2, 2003, until on or about March 19, 2007, he was registered through that firm as a General Securities Representative.

On or about March 19, 2007, a Uniform Termination Notice for Securities Industry Registration ("Form U5") was filed by SBSC on behalf of Respondent McKinney. The Form U5 disclosed that McKinney had been discharged on March 12, 2007.

Respondent McKinney is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over him for purposes of this disciplinary proceeding.

FINDINGS AND CONCLUSIONS

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

During the period from October 2004 until March 2007, Respondent Matthew T. McKinney purchased merchandise for his personal benefit and arranged for a company affiliated with his employer firm to pay for the merchandise. He sold some of the merchandise and retained the proceeds of those sales, thereby converting the company's funds and merchandise to his own use and benefit.

On May 14 and August 13, 2007, the FINRA staff sent written requests for information to Respondent McKinney pursuant to NASD Procedural Rule 8210. Respondent McKinney failed to provide any of the requested information.

During the period from on or about October 1, 2004, until on or about April 9, 2007, while Respondent McKinney was registered through SBSC, he was assigned a corporate credit card by ShareBuilder Corporation, an affiliate of SBSC. Without the knowledge, authorization or consent of ShareBuilder Corporation or SBSC, Respondent McKinney used the credit card to purchase merchandise for his personal benefit. He also purchased additional merchandise for his personal benefit, which was billed directly by the vendors to ShareBuilder Corporation.

During that time period, without the knowledge, authorization or consent of either SBSC or ShareBuilder Corporation, Respondent McKinney sold some of the merchandise that had obtained through ShareBuilder Corporation and retained the proceeds of those sales.

During the period from on or about August 31, 2006, to on or about February 16, 2007, Respondent McKinney made at least five purchases at a total cost of approximately \$5,705.47, which was paid by ShareBuilder Corporation. He later sold the items he had purchased through an eBay account. Those purchases were:

- a. A MacBook computer, purchased from an Apple Store on or about August 31, 2006, for approximately \$1,402.92, and sold on or about October 10, 2006;
- b. A MacBook computer, purchased from Apple Corporation on or about September 20, 2006, for approximately \$1,343.69, and sold on or about September 24, 2006;
- c. A Microsoft Xbox game console, purchased from Best Buy on or about November 29, 2006, for approximately \$435.19, and sold on or about December 7, 2006;

- d. A Sony notebook computer, purchased from a Circuit City store on or about January 26, 2007, for approximately \$2,230.37, and sold on or about February 28, 2007; and
- e. Two iPod Nanos, purchased from Mac Mall on or about February 16, 2007, for approximately \$293.30, and sold on or about February 21, 2007.

Respondent McKinney thereby converted funds and merchandise of ShareBuilder Corporation to his own use and benefit.

In or about March 2007, FINRA initiated an investigation concerning alleged conversion by Respondent McKinney. The investigation focused on whether Respondent McKinney had converted funds and merchandise of ShareBuilder Corporation, an affiliate of his employer firm. In connection with that investigation, FINRA staff requested information from Respondent McKinney.

First Request for Information

On May 14, 2007, FINRA staff sent a request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the FINRA investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to Respondent McKinney's residential address, as reflected in FINRA's Central Registration Depository ("the CRD Address"). The first request letter required a response no later than May 28, 2007.

The envelope sent to the CRD Address via first class mail on May 14, 2007, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "Return to sender; not deliverable as addressed; unable to forward."

In response to its first request for information, FINRA staff did not receive a response from Respondent McKinney that provided any of the information requested. On May 24, 2007, the staff received a telephone call from Respondent McKinney's attorney. The attorney stated that because a police investigation of Respondent McKinney's conduct was underway, he had advised Respondent McKinney not to provide information to FINRA in response to the staff's request.

As of November 2, 2007, no criminal charges had been filed against Respondent McKinney, and on information and belief, no criminal charges have been filed to date.

Second Request for Information

On August 13, 2007, FINRA staff sent a second request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the FINRA investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The second request letter required a response no later than August 27, 2007.

The envelope sent to the CRD Address via first class mail on August 13, 2007, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "Unclaimed."

Respondent McKinney did not respond in any fashion to the staff's second request for information.

To date, FINRA has not received any response from Respondent McKinney to the foregoing requests for information, other than the telephone call from counsel on May 24, 2007.

Based on the foregoing, Respondent committed separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

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

SANCTIONS

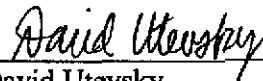
It is ordered that Respondent be barred from associating with any member of FINRA in any capacity.

The sanction 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



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