

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

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Joseph P. Lovaglio,
CRD No. 3234996

Respondent.

Disciplinary Proceeding
No. 2007008650501

Hearing Officer - LBB

Date: January 7, 2008

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. 20070086506 was filed on September 28, 2007, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent Joseph P. Lovaglio submitted an Offer of Settlement ("Offer") to Complainant on January 2, 2008. Pursuant to NASD 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 NASD 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

Lovaglio first became registered with FINRA as a General Securities Representative on March 15, 2005 through an association with Max International Broker-Dealer Corporation (BD No. 46039)("Max"). On October 5, 2005, Max filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Lovaglio's registration. The Form U5 indicates that his last date of employment at Max was October 5, 2005, and that the termination was voluntary.

Currently, Lovaglio is neither registered with FINRA nor associated with any FINRA member firm. The instant complaint was filed on September 28, 2007. Therefore, Lovaglio remains subject to FINRA's jurisdiction in this proceeding pursuant to Article V of FINRA's By-Laws.

Prior to this examination, Lovaglio had no disciplinary history with the Securities and Exchange Commission, any state securities regulator or any self-regulatory association.

On November 26, 2007, Lovaglio was named as a defendant in an SEC proceeding that alleged, *inter alia*, that Lovaglio violated Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and aided and abetted his co-defendants' violations of Section 206(4) of the Investment Advisers Act of 1940.

On November 27, 2007, the SEC obtained an order temporarily restraining Lovaglio from continuing to engage in a fraudulent offering of securities. The court also froze Lovaglio's assets

and ordered (1) the defendants to promptly provide sworn accountings, (2) that discovery be accelerated, (3) that Lovaglio be prohibited from destroying documents, and (4) that a preliminary injunction hearing be held on December 12, 2007 to determine if the interim relief should be continued.

FINDINGS AND CONCLUSIONS

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

1. On or about April 9, 2007, the staff of FINRA's District 10 Member Regulation Department (the "Staff") received a customer complaint against Lovaglio. The complaint concerned the customer's \$2,500 investment through Lovaglio and an entity called M.P. Capital, LLC, in an entity called "Data Wind." The complaint alleged that Lovaglio misrepresented facts, provided misleading information about securities, forged securities and failed to provide account documentation, an accounting and a refund. The Staff opened an investigation to evaluate the allegations in the complaint.

2. During its investigation, the Staff became aware of a second customer who had alleged fraud in a \$5,000 investment through Lovaglio and M.P. Capital. The customer's complaint also alleged that Lovaglio misrepresented facts, provided misleading information and failed to follow proper legal procedures in soliciting funds and setting up an investment account on the customer's behalf. The customer demanded a refund.

3. While investigating the claims made by the two customers, the Staff requested, pursuant to Procedural Rule 8210, that Lovaglio provide information related to their claims.

4. By letter dated May 2, 2007, the Staff first requested information from Lovaglio. By an undated fax that enclosed a document and three letters dated May 14, 2007 that were addressed "to whom it may concern," Lovaglio responded to the Staff's May 2, 2007 request.

The May 2, 2007 letter requested, among other things, that Lovaglio provide (i) a copy of all documentation in his possession relating to the first customer's investment in Data Wind and any other security or products Lovaglio sold that customer while Lovaglio was at Max and M.P. Capital, (ii) a signed, detailed statement regarding why he left Max and addressing each allegation in the customer's complaint, and (iii) certain information about M.P. Capital, including whether the first customer's account was held at M.P. Capital, and if so, seeking a copy of all documentation and information regarding the account.

The June 26, 2007 Request

5. By letter dated June 26, 2007, the Staff requested, pursuant to Procedural Rule 8210, that Lovaglio provide certain additional information by July 10, 2007. The requested information concerned, *inter alia*, M.P. Capital and Lovaglio's interactions with both customers who had complained about Lovaglio. The June 26, 2007 letter also requested that Lovaglio provide, *inter alia*, copies of his bank account statements from 2005.

6. The letter was sent by certified mail and first class mail to Lovaglio's last known residential address as reflected in the records of FINRA's Central Registration Depository, which is: [REDACTED] (hereinafter "CRD Address").

7. The certified mailing was delivered and signed illegibly according to the return receipt card that was returned to the Staff. The first class mailing was not returned to the Staff.

8. Lovaglio did not respond to the June 26, 2007 request.

The July 19, 2007 Request

12. By letter dated July 19, 2007, the Staff sent Lovaglio a second written request pursuant to Procedural Rule 8210. The July 19, 2007 letter referenced and enclosed the June 26, 2007 request, explained that Lovaglio had not responded to the June 26, 2007 request, and

invoked Procedural Rule 8210. The July 19, 2007 letter stated that the requested materials had to be provided to FINRA by August 2, 2007.

13. The July 19, 2007 letter was sent by certified mail and first class mail to Lovaglio's CRD Address.

14. The envelope containing the certified mailing was returned to the Staff stamped "Unclaimed." The first class mailing was not returned to the Staff.

15. Lovaglio did not respond to the July 19, 2007 request.

The August 6, 2007 Request

16. By letter dated August 6, 2007, the Staff sent Lovaglio a third written request pursuant to Procedural Rule 8210. The August 6, 2007 letter referenced and enclosed the June 26, 2007 and July 19, 2007 requests, explained that Lovaglio had not responded to those requests, and invoked Procedural Rule 8210. The August 6, 2007 letter stated that the requested materials had to be provided to FINRA by August 21, 2007.

17. The August 6, 2007 letter was sent by certified mail and first class mail to Lovaglio's CRD Address.

18. The envelope containing the certified mailing was returned to the Staff stamped "Unclaimed." The first class mailing was not returned to the Staff.

19. Lovaglio did not respond to the August 6, 2007 request.

The August 16, 2007 Phone Call

20. On August 16, 2007, the Staff called Lovaglio and asked him if he received and planned to respond to the Staff's requests.

21. At first he claimed he had not received the requests. However, after the Staff noted that it had received back a signed copy of one of the certified mail receipts, Lovaglio then

admitted that he had received the June 26, 2007 letter and "had stuck it in a drawer." Lovaglio searched the drawer while the Staff was on the phone. He then told the Staff that he located the June 26, 2007 letter. He stated that he would respond to the letter in approximately a week. The Staff has not received any response from Lovaglio.

22. Lovaglio's failure to provide the requested information and documents impeded the Staff's investigation into the underlying conduct.

By reason of the foregoing, Lovaglio violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

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 Lovaglio be barred from associating with any FINRA member firm in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to IM-8310-3(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 cursive script, reading "Elissa M. Meth", written over a horizontal line.

Elissa M. Meth
Regional Counsel
FINRA Department of Enforcement
One Liberty Plaza
New York, New York 10006
212-858-4702 (phone)
212-858-4770 (fax)