

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JASON T. PIRNIE
(CRD No. 4432797),

Respondent.

Disciplinary Proceeding
No. 2007008830602

Hearing Officer – MC

DEFAULT DECISION

May 21, 2009

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information issued by FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210. In light of the bar, no separate sanction is imposed on Respondent for violating Conduct Rule 2110 by conducting securities business through an unregistered person.

Appearances:

Paul D. Taberner, Senior Regional Counsel, Boston, MA, for the Department of Enforcement.

No appearance by or for Respondent Jason T. Pirnie.

DECISION

I. Introduction

On October 27, 2008, the Department of Enforcement (“Enforcement”) filed the attached Complaint in this disciplinary proceeding. It alleges that Respondent Jason T. Pirnie (“Respondent”) conducted securities business through an unregistered person, in violation of Conduct Rule 2110. It also alleges that Respondent failed on two occasions to respond to

requests for personal bank account statements issued to him by FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210.¹

Enforcement served Respondent twice with the Complaint and Notice of Complaint at his most current residential address recorded in FINRA's Central Registration Depository (the "CRD address"), as well as at a second address provided by Respondent. Respondent failed to file an Answer. On January 30, 2009, therefore, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Paul D. Taberner, Senior Regional Counsel for FINRA's Boston, MA, District Office, and three exhibits.

Shortly thereafter, on February 6, 2009, Enforcement forwarded to the Office of Hearing Officers a letter sent by Respondent to Enforcement's counsel in this matter. The letter contained numbered paragraphs corresponding to the paragraph numbers of the Complaint. In the letter, Respondent admitted, denied, or asserted he had insufficient information to be able to admit, or deny, each allegation in the Complaint. The letter conformed substantially to the requirements of Rule 9215. Accordingly, the Hearing Officer determined the letter to be a sufficient Answer to the Complaint. Consequently, on February 11, 2009, a Notice of Receipt of Answer to Complaint, deeming the Answer filed as of February 6, 2009, and an Order Denying Motion for Entry of Default Motion, were issued.

On the same date, an Order Scheduling Initial Pre-Hearing Conference ("Initial Conference") was issued, setting the Initial Conference for February 24, 2009. At the request of Enforcement, the Initial Conference was re-scheduled for February 25, 2009, and an Order to that effect was served on the parties. Respondent failed to attend the Initial Conference.

¹ On December 15, 2008, the first phase of the new consolidated FINRA Rules, resulting from the consolidation of NASD with the member regulation and enforcement functions of NYSE Regulation, went into effect. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

By Order dated February 25, 2009, a second initial pre-hearing conference (“Second Conference”) was scheduled for March 6, 2009, at 12:00 p.m., Eastern Time. Respondent had actual notice of the date and time of the Second Conference and the requirement that he attend.

Nonetheless, Respondent failed to attend the Second Conference. Accordingly, the Hearing Officer issued an order pursuant to Rule 9269 (“9269 Order”) dated March 6, 2009, requiring Respondent to show cause by March 13, 2009, why he should not be held to have defaulted for failing to appear at the two pre-hearing conferences. The Order informed Respondent that if he failed to show cause why he should not be held in default, the allegations in the Complaint may be deemed admitted and a default decision may be issued based upon those admissions.

Respondent failed to respond to the 9269 Order. On April 14, 2009, therefore, the Hearing Officer issued an Order Holding Respondent in Default (“Default Order”). The Default Order deemed Enforcement’s original Default Motion to be renewed as of April 14, 2009. The Default Order provided Respondent with a deadline of April 28, 2009, to file an opposition to the Default Motion. Respondent has failed to do so.² Accordingly, considering all of these circumstances, and for the additional reasons set forth below, Enforcement’s Default Motion is hereby granted.

² On April 30, 2009, Respondent filed a letter with the Office of Hearing Officers, dated April 20, 2009, which attached another letter, dated March 11, 2009, that Respondent had sent to Enforcement. While the April 30 filing makes reference to the April 14, 2009, Default Order, the filing (i) does not address why Respondent should not be held in default for failing to appear at two pre-hearing conferences, (ii) does not respond to the show cause order, and (iii) fails to respond in any manner to Enforcement’s Default Motion as the Default Order specifically directed Respondent to do. Accordingly, Respondent’s April 30 filing has not been considered in this proceeding.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became registered with FINRA as a General Securities Representative in 2001. From August 27, 2003, to July 27, 2006, Respondent was registered through FINRA member firm Ayre Investments, Inc. ("Ayre"). Respondent has not been registered with a FINRA member firm since July 27, 2006.

On November 6, 2007, Ayre filed an amended Form U5 for Respondent based on two customer complaints made to Ayre after Respondent's employment with the firm was terminated. The customer complaints alleged that Respondent had transferred their accounts to Ayre without their authorization.

The First Cause of the Complaint filed by Enforcement alleges misconduct by Respondent that occurred while he was working as a registered representative with Ayre. The Second Cause of the Complaint alleges misconduct by Respondent that occurred during the FINRA staff's investigation, which took place within two years of the filing of the amended Form U5 by Ayre. The Complaint was filed within that two-year period. FINRA therefore retains jurisdiction to bring this disciplinary proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws.

B. Respondent's Defaults

By Order dated February 13, 2009, with due notice to the parties, the initial pre-hearing conference in this matter was set for February 25, 2009, at 3:00 p.m., Eastern Time. Respondent failed to appear. By Order dated February 25, 2009, the initial pre-hearing conference was rescheduled for March 6, 2009, at 12:00 p.m., Eastern Time, a date and time selected by Respondent when he was contacted by the Case Administrator assigned to this disciplinary

proceeding. Despite having chosen the date and time, Respondent again failed to appear.³ Accordingly, following the pre-hearing conference on March 6, 2009, an Order for Respondent to Show Cause why he should not be deemed in default was issued. Respondent failed to respond to the Show Cause Order. By failing to attend the pre-hearing conferences, and by failing to respond to the Show Cause Order, Respondent defaulted.⁴ Accordingly, pursuant to Rule 9269, the allegations in the Complaint are deemed admitted.

C. Violations

1. Conducting Securities Business Through an Unregistered Person

The First Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 while registered with Ayre by conducting securities business through an unregistered person. That person, GD, was last registered in the securities business in 1993. In September 2002, Respondent and GD entered into a contract for Respondent to purchase GD's insurance business. The contract called for Respondent to pay GD \$750,000 over a period of five years, and, in return, for GD to refer the business's customers to Respondent for investment and insurance services. While registered with Ayre, Respondent became listed as the agent of record for GD's former insurance customers.⁵

During this period, Respondent and GD frequently met together with Respondent's customers to discuss the customers' investments and insurance needs. On some occasions, however, GD met alone with Respondent's customers, recommending, offering, and selling variable annuities and mutual funds to them. For example, in May 2006, GD met with and sold a

³ At the March 6, 2009, pre-hearing conference, Enforcement's counsel disclosed that an attorney who previously represented Respondent called Enforcement on March 5. The attorney, who called Enforcement as a courtesy, said that Respondent advised him that he did not intend to participate in the March 6 conference.

⁴ *Dep't of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42 at *5 (N.A.C. Dec. 9, 2003).

⁵ Taberner Decl. ¶ 11.

variable annuity to Respondent's customer, HK. Respondent was not present at the meeting, and GD completed the necessary paperwork. The Complaint alleges that Respondent knew GD was not registered with FINRA at the time the meetings with the customers occurred, and was aware that GD was recommending, offering and selling securities to Respondent's customers.

On the basis of these allegations, deemed admitted, Respondent violated Conduct Rule 2110.

2. Failure to Respond to Requests for Information Made Pursuant to Rule 8210

The Second Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 when he failed to respond to two successive requests for information issued by FINRA staff under the authority of Rule 8210. The requests required Respondent to provide copies of personal bank account statements for the period he was registered with Ayre, so that FINRA staff could determine the extent of the business transacted between Respondent and GD.

The first request was sent on November 6, 2007, by first-class and certified mail to Respondent's CRD address. Neither the first-class nor the certified mailing was returned. Respondent, however, sent FINRA staff a letter dated November 20, 2007, refusing to provide FINRA with the requested documents. Thus, Respondent was fully aware of the request.

FINRA staff sent a second request for the same documents pursuant to Rule 8210 on December 12, 2007. This letter, too, was sent by first-class and certified mail to Respondent's CRD address. In addition, copies were sent by both first-class and certified mail to a second address ("Wilbraham address"), provided by Respondent in his November 20 letter to FINRA staff. The certified return receipt for the mailing sent to Respondent's CRD address was signed for on December 15, 2007, by "Jennifer Pirnie." The first-class envelope sent to the CRD

address was not returned. The first-class and certified mailings sent to the Wilbraham address were not returned and no certified mail receipt was returned from this address.

Based on these allegations, deemed admitted, Respondent failed to respond to FINRA staff requests for information pursuant to Rule 8210 and, so doing, violated Conduct Rule 2110 and Procedural Rule 8210.

D. Sanctions

1. Conducting Business Through an Unregistered Person

The FINRA Sanction Guidelines do not address violations of Conduct Rule 2110 that consist of conducting securities business through an unregistered individual. However, for engaging in securities business without being registered, an analogous violation, the Guidelines recommend a fine of \$2,500 to \$50,000, a suspension in any or all capacities for up to six months or, in egregious cases, a suspension for up to two years or a bar.⁶

Enforcement recommends imposition of a four-month suspension in all capacities and a fine of \$10,000 for conducting securities business through GD. Enforcement cites as aggravating the facts that Respondent knowingly allowed GD to meet with Respondent's customers to recommend and sell variable annuities and other investments to them, and that GD completed the paperwork for the sales. Enforcement points out that by this misconduct, in which Respondent engaged without the knowledge of his firm, Respondent prevented Ayre from properly supervising the sales activities he conducted through his unregistered agent, thereby putting the firm's customers at risk. Enforcement's rationale is reasonable and its recommended sanction is appropriate under the circumstances of this case. However, in light of the bar imposed below upon Respondent for his failure to respond to FINRA staff requests for

⁶ *FINRA Sanction Guidelines*, 48 (2007).

information pursuant to Procedural Rule 8210, it is unnecessary to impose a separate sanction for Respondent's violation of Conduct Rule 2110, as alleged in the First Cause of the Complaint.

2. Failure to Respond to Rule 8210 Information Requests

The Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.⁷ Where mitigation exists, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.

The record reflects that Respondent received two written requests issued pursuant to Procedural Rule 8210 for bank account statements. Respondent did not provide the requested records. Instead, Respondent informed Enforcement in writing that he was refusing to provide the requested copies of bank statements. The record is devoid of any mitigating circumstances that might justify the imposition of a sanction less than a bar.

As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations. Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information."⁸ Concerning sanctions for violating Rule 8210, "[t]he Guidelines treat a failure to respond ... as egregious."⁹

A bar, therefore, is the appropriate sanction for Respondent's failures to respond in any manner to the two requests for information in violation of Rules 2110 and 8210, as alleged in the Second Cause of the Complaint.

⁷ *Id.* at 35.

⁸ *Dep't of Enforcement v. Gregory R. Masceri*, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

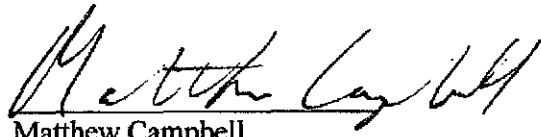
⁹ *Id.* at *41.

E. Order

Respondent Jason T. Pirnie is barred from association with any FINRA member firm in any capacity for failing to respond in any manner to requests for information issued by 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 disciplinary action in this proceeding.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Matthew Campbell", is written over a horizontal line.

Matthew Campbell
Hearing Officer

Copies to:

Jason T. Pirnie (*via FedEx and first-class mail*)
Paul D. Taberner, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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DEPARTMENT OF ENFORCEMENT,

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V.

JASON T. PIRNIE (CRD No. 4432797),

Respondent.

Disciplinary Proceeding
No. 2007008830602

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From at least October 2003 through June 2006, Jason T. Pirnie, while a registered representative of a FINRA member firm, conducted securities business with several of his firm customers through an unregistered individual. This conduct violated NASD Conduct Rule 2110.
2. Pirnie has refused to provide FINRA staff with copies of his bank account statements. This conduct violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

3. In 2001, Pirnie first became registered with FINRA as a General Securities Representative. From on or about August 27, 2003 to July 27, 2006, Pirnie was registered through FINRA member firm Ayre Investments, Inc.
4. On November 6, 2007, Ayre Investments filed an amended Form U5 for Pirnie, relating to two customer complaints received by the firm after his termination.

The customers alleged, among other things, that Pirnie had transferred their accounts to Ayre Investments without their authorization. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Pirnie for the purposes of this Complaint, in that the misconduct alleged in the First Cause of Action occurred while Pirnie was associated with a member firm, and the misconduct alleged in the Second Cause of Action, and the filing of this Complaint, occurred within two years of Ayre Investments' November 6, 2007 amended U5 filing for Pirnie.

FIRST CAUSE OF ACTION

CONDUCTING SECURITIES BUSINESS THROUGH AN UNREGISTERED PERSON (Violation of NASD Conduct Rule 2110)

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. GD was an acquaintance of Pirnie's and a former registered representative who was last registered in the securities industry in 1993. In approximately September 2002, Pirnie and GD entered into a contract for Pirnie to purchase GD's insurance business. Pirnie agreed to pay GD \$750,000 over a period of approximately five years. In return, GD would refer his customers to Pirnie for investments and insurance. The terms of the agreement also stated that GD would be available as needed to facilitate client relationships, retain customers, and maintain a presence in the office.
7. After Pirnie registered through Ayre Investments, he became listed as the agent of record for GD's former insurance customers.

8. During his tenure with Ayre Investments, Pirnie and GD often met with Pirnie's customers together to discuss the customers' investment and insurance needs. In some instances, however, Pirnie was unavailable to meet with his customers. In many of those instances, GD conducted the client meetings himself.
9. In those meetings with Pirnie's customers, GD recommended, offered and sold variable annuities and mutual funds to the customers. In those instances, GD independently completed the variable annuity or mutual fund paperwork using Pirnie's name and status as a registered representative in order to facilitate processing of the transactions in Pirnie's absence. For example, in May 2006, GD met with and sold a variable annuity to Pirnie's customer HK. Pirnie was not present during that meeting; GD completed the necessary paperwork using Pirnie's name.
10. Pirnie knew that GD was not registered with FINRA at the time the meetings with those customers occurred. He was also aware that GD was conducting meetings with his customers and recommending, offering and selling securities to them. Nevertheless, Pirnie took no steps to stop GD from engaging in this activity.
11. By conducting a securities business through an unregistered individual, Pirnie violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REQUESTED RECORDS (Violation of NASD Procedural Rule 8210 and Conduct Rule 2110)

12. The Department realleges and incorporates by reference paragraphs 1 through 11 above.

13. By a letter dated November 6, 2007, FINRA staff requested, pursuant to Procedural Rule 8210, that Pirnie provide copies of all personal bank account statements for the period covering his tenure at Ayre Investments to determine the extent of the business that was transacted between Pirnie and GD. The letter requested a response by December 3, 2007, and was sent by first class and certified mail to Pirnie's residential address shown in Web CRD, [REDACTED]. [REDACTED] Neither the envelope sent by first class or nor the envelope sent by certified mail (or the receipt) were returned. In response to the staff's Rule 8210 request, Pirnie sent the staff a letter dated November 20, 2007 indicating that he would not provide FINRA with the requested bank account statements.
14. By letter dated December 12, 2007, FINRA staff again requested, pursuant to Procedural Rule 8210, that Pirnie provide the personal bank account statements. The December 12, 2007 letter enclosed a copy of the November 6, 2007 letter and warned Pirnie that failure to provide the information requested could result in disciplinary action against him by FINRA. The letter requested a response by December 21, 2007 and was sent by first class and certified mail to Pirnie's Web CRD address and to another address provided by Pirnie in his November 20, 2007 letter, [REDACTED]. The December 12, 2007, certified envelope sent to Pirnie's Web CRD address was signed for on December 15, 2007 by Jennifer Pirnie. The first class envelope sent to Pirnie's Web CRD address was not returned. The letters (and the certified mail receipt) sent to the Wilbraham, Massachusetts address have not been returned to the staff.

15. FINRA staff is not aware of a more current residential or a business address for Pirnie.
16. To date, Pirnie has failed to provide FINRA with the requested personal bank account statements.
17. By failing to provide FINRA staff with the requested bank statements, Pirnie violated NASD Procedural Rule 8210 and 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: 10/24/08


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