

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RASHANN BRYANT
(CRD No. 2853062),

Respondent.

Disciplinary Proceeding
No. 2007008888001

Hearing Officer – LBB

DEFAULT DECISION

May 4, 2009

For failing to provide requested information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, Respondent is barred from associating with any FINRA member firm. In light of the bar, no additional sanctions are imposed for engaging in private securities transactions without providing prior notice to his firm, in violation of NASD Conduct Rules 3040 and 2110, or for failing to provide prompt written notice to his firm of his involvement in outside business activities, in violation of NASD Conduct Rules 3030 and 2110.

Appearances

Dale A. Glanzman, Regional Counsel, FINRA, Chicago, IL, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this proceeding on December 3, 2008, asserting three causes of action against Respondent Rashann Bryant ("Respondent"). The first cause of action alleges that Respondent violated NASD Conduct Rules 3040 and 2110 by engaging in a private securities transaction without providing prior written notice to his firm. The second cause of action alleges that Respondent violated NASD

Conduct Rules 3030 and 2110 by engaging in outside business activities without providing prompt written notice to his firm. The third cause of action alleges that Respondent failed to respond to Rule 8210 requests for information, thereby violating NASD Procedural Rule 8210 and Conduct Rule 2110.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On March 2, 2009, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted, and Enforcement's motion is granted.¹

I. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on Respondent at his current residential address as listed in the Central Registration Depository ("CRD"), and at his last-known address, by first-class regular and certified mail on December 3, 2008. The certified mailing sent to the CRD address was returned by the Postal Service, but neither the first-class mailing to Respondent's CRD address nor either mailing sent to the last-known address was returned.

Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class regular and certified mail at his CRD address and last-known address on January 6, 2009. The Postal Service returned the mailings to the CRD address and the certified mailing sent to Respondent's last-known address. The first-class mailing sent to Respondent's last-known address was not returned.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials filed by Enforcement with its motion.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. Respondent has failed to respond to the Complaint. By failing to respond, he defaulted.

II. Origin of the Investigation

The Department of Enforcement initiated this investigation as a result of the receipt of a complaint letter from N.D. on behalf of her parents, F.J. and D.J. The complaint letter stated that N.D.'s elderly and unsophisticated parents had followed Respondent's recommendation to liquidate their GE Choice Variable Annuity ("Variable Annuity") and purchase a Flexible Premium Fixed Index Annuity from Fort Dearborn Life Insurance Company ("Fixed Annuity"), thereby incurring a withdrawal charge and federal withholding tax for liquidating the Variable Annuity.

III. Jurisdiction

Respondent was an Investment Company and Variable Contracts Products Representative with FINRA member firm AIG Financial Advisors, Inc. from October 2005 until November 2006. On May 25, 2007, an Amended Uniform Termination Notice for Securities Industry Registration (Form U5) was filed with FINRA, in which AIG disclosed, for the first time, that N.D. had complained to AIG concerning her parents' transactions while they were Respondent's customers at AIG. Those transactions are the subject of the first and second causes of action. The third cause of action charges Respondent with failing to respond to requests for information served within two years of the termination of his employment with AIG.

Although Respondent has not been associated with any FINRA member since November 2006, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the filing of an amendment to the notice of his termination of his association with a member

firm, the amendment was filed within two years after the termination of his registration, the amendment disclosed that Respondent may have engaged in actionable conduct under FINRA's rules, and the Complaint charged him with misconduct while he was associated with a member firm and with failing to respond to Rule 8210 requests issued within two years following the filing of the amended notice of the termination of his association with a member firm.

IV. Violations

A. Private Securities Transaction

The first cause of action alleges that Respondent violated Rules 3040 and 2110 by engaging in a private securities transaction by recommending the sale of the Variable Annuity by F.J. and D.J. without notifying his firm.

In December 2002, before his association with AIG, Respondent sold the Variable Annuity to F.J. and D.J. In June 2006, while Respondent was associated with AIG, he recommended that they liquidate the Variable Annuity, then worth \$48,440.23, and buy the Fixed Annuity. F.J. and D.J. followed Respondent's recommendation, liquidating the Variable Annuity, receiving a check for \$40,599.23, and incurring a withdrawal fee of \$2,997.25 and federal withholding tax of \$4,885.05. Respondent did not give written notice to AIG of his intention to participate in the liquidation of the Variable Annuity, and failed to obtain written acknowledgement of his participation from the firm.

Rule 3040(b) requires an associated person to provide his employer with written notice of private securities transactions before the transactions take place.² The rule defines a private securities transaction as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings

² A violation of Conduct Rule 3040 also constitutes a violation of Conduct Rule 2110. *Dep't of Enforcement v. Frankfort*, No. C02040032, 2007 NASD Discip. LEXIS 16, at *39 n.25 (N.A.C. May 24, 2007) (citation omitted).

of securities [that] are not registered with the Commission.” The NAC has held that the sale of variable annuities without providing prior written notice to the firm violates Rule 3040. *Dep’t of Enforcement v. Ryerson*, No. C9B040033, 2006 NASD Discip. LEXIS 17, at *21 – *23 (N.A.C. Aug. 3, 2006).

By his participation in the liquidation of the Variable Annuity without providing prior written notice to his firm, Respondent violated Rules 3040 and 2110.

B. Outside Business Activities

The second cause of action alleges that Respondent violated Rules 3030 and 2110 by selling the Fixed Annuity to F.J. and D.J. without providing prompt written notice to AIG.

At Respondent’s recommendation, F.J. and D.J. used \$40,000 of the proceeds of the sale of the Variable Annuity to purchase the Fixed Annuity. On or about July 18, 2006, Respondent received approximately \$1,700 in compensation for selling the Fixed Annuity to D.J. and F.J. Respondent split a \$3,400 commission with D.H., an insurance agent. Respondent did not give written notice to AIG of his receipt of compensation for his role in the sale of the Fixed Annuity to F.J. and D.J.

Conduct Rule 3030 provides that no person registered with a member “shall be employed by, or accept compensation from, any other person as a result of any business activity ... outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member ... in the form required by the member.” The purpose of Conduct Rule 3030 is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate supervision as necessary under applicable law.³

³ *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Rel. No. 26063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Rel. No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.⁴

Respondent engaged in outside business activity when he received a commission for the sale of the Fixed Annuity while employed by a FINRA member firm, but failed to provide prompt written notice to the firm. By failing to provide prompt written notice of his outside business activity to the firm, Respondent violated Conduct Rules 3030 and 2110.

C. Failure to Respond to Requests for Information

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. Pursuant to Rule 8210, FINRA staff requested documents from Respondent, and directed Respondent to appear for an on-the-record interview ("OTR"). Respondent failed to provide the information or to appear for testimony.

On March 5 and 14, and April 2, 2008, FINRA staff sent Respondent a request for information, pursuant to Rule 8210, to Respondent's most recent address, but not to his CRD address. The request asked for information about the suitability of his recommendations to F.J. and D.J. to liquidate the Variable Annuity and purchase the Fixed Annuity, including his understanding of the customers' financial situation and investment objectives. The request also asked about his understanding of AIG's policies and procedures with respect to outside business activities, whether he had provided notice to AIG of his outside business activities with D.H. (the insurance agent), and the compensation he had received for those activities. Respondent did not respond to these requests.

⁴ *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (N.B.C.C. Oct. 31, 1997).

On October 6, 2008, pursuant to Rule 8210, FINRA staff sent Respondent another request for information by regular first-class and certified mail, to Respondent's CRD address and his most recent address, repeating the questions that had been posed in the earlier requests. The mailings sent to Respondent's CRD address were returned by the Postal Service. The mailings to the last-known address were not returned. Respondent did not respond to this request.

FINRA staff spoke to Respondent on the telephone on October 6, 2008. Respondent told the staff that he would answer the questions. He gave the staff his email address, and the staff sent a copy of the questions to his email address.

On November 4, 2008, FINRA staff sent Respondent another request for information, pursuant to Rule 8210. The request was sent to Respondent's CRD and last-known addresses, by first-class regular and certified mail. The Postal Service returned the certified mailing sent to the CRD address to the FINRA District Office, stamped "Return to Sender; Attempted; Not Known." Neither the regular first-class mailings nor the certified mailing to the last-known address was returned by the Postal Service. Respondent did not respond to this request.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. A violation of Rule 8210 is also a violation of Rule 2110. *Dep't of Enforcement v. Hooper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

For failing to respond in any manner to requests for information, the Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35 (2007). One of the principal considerations is the nature of the information requested. The information requested was important to

determine whether Respondent recommended unsuitable transactions to F.J. and D.J. It was especially important in light of the fact that the customers were elderly and unsophisticated, and the transaction was possibly unsuitable.⁵ The requests were also important to determine the extent of Respondent's outside business activities with D.H. The second principal consideration is whether the requested information has been provided. Respondent has not provided any of the information requested.

There are no mitigating factors that would support a reduction in the sanction from the standard sanction, but there are aggravating factors. A bar is the appropriate sanction for Respondent's failure to respond to requests for information.

Enforcement does not request a sanction for the violations of Conduct Rules 3040 and 3030 in light of its request for a bar for Respondent's failure to respond to requests for information, and no sanction is imposed.⁶

VI. Conclusion

Respondent is barred from associating with any FINRA member firm for failing to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no additional sanctions are imposed for engaging in private securities transactions without providing prior written notice to his firm, in violation of Conduct Rules 3030 and 2110, or engaging in outside business activities without providing prompt written notice to his firm, in violation of Conduct Rules 3040 and 2110.

⁵ *Dep't of Enforcement v. Epstein*, No. C9B040098, 2007 FINRA Discip. LEXIS 18 (N.A.C. Dec. 20, 2007) (unsuitable mutual fund switch recommendations violate Rule 2310, 2110, and IM-2310-2.), *aff'd*, *Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217 (Jan. 30, 2009).

⁶ Enforcement has not alleged that the transactions were unsuitable or that the customers were injured as a result of the transactions, and has not asked for restitution. Accordingly, restitution is not ordered.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard
Hearing Officer

Copies to: Rashann Bryant (*via overnight courier and first-class mail*)
Dale A. Glanzman, Esq. (*via email and first-class mail*)
Mark P. Dauer, Esq. (*via email*)
David R. Sonnenberg, Esq. (*via email*)

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

RASHANN BRYANT,
Registered Representative
(CRD No. 2853062)

Respondent.

Disciplinary Proceeding
No. 2007008888001

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In July 2006, Respondent, Rashann Bryant ("Bryant") caused two elderly customers to liquidate a variable annuity and buy a fixed equity index annuity. He accepted a commission of \$1,700 for the sale of the fixed equity index annuity. Bryant did not give prior written notice of the liquidation of the variable annuity to the Member, and failed to give prompt written notice of the sale of the fixed equity index annuity to the Member, in violation of Conduct Rules 3040, 3030 and 2110. Bryant also failed to respond to requests for information, made pursuant to Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. Bryant entered the securities industry in February 2004 as an Investment Company/Variable Contracts Products Representative with a FINRA member. Between October 2005 and November 2006, Bryant was registered in the same capacity with AIG Financial

Advisors, Inc. ("Member"), a member of FINRA. On May 25, 2007, an Amended Uniform Termination Notice for Securities Industry Registration (Form U-5) was filed with FINRA, in which the Member disclosed, for the first time, the complaint from the daughter of customers D.J., and F.J., which gave rise to this disciplinary action. Bryant is not currently registered with a FINRA member. Bryant therefore is subject to the jurisdiction of the FINRA, pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE OF COMPLAINT
Private Securities Transactions
Violations of NASD Conduct Rules 2110 and 3040

2. The Department realleges and incorporates by reference paragraph 2 above.
3. On or about July 3, 2006, Bryant participated in a private securities transaction by causing the liquidation of a security, in the form of a GE Choice Variable Annuity, for D.J. and F.J., two public customers of the Member, through the Genworth Life and Annuity Insurance Company ("Genworth").
4. When the Genworth variable annuity was liquidated, there was an imposition of a withdrawal fee of \$2,997.25 and federal tax withholding of \$4,885.05, resulting in a payout of \$40,599.23 for the variable annuity. Bryant did not earn a commission from the liquidation of the variable annuity.
5. In connection with his liquidation of the Genworth variable annuity, Bryant failed to give written notice of his intention to participate in the liquidation of the Genworth variable annuity to the Member, and failed to receive written acknowledgement of his participation from the Member, prior to engaging in the liquidation of the Genworth variable annuity.

6. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 3040 and 2110.

SECOND CAUSE OF COMPLAINT
Outside Business Activities
Violations of NASD Conduct Rules 2110 and 3030

7. The Department realleges and incorporates by reference paragraph 2 above.

8. On or about July 18, 2006, Bryant engaged in an outside business activity by receiving approximately \$1,700 in compensation for selling a \$40,000 Flexible Premium Fixed Index Annuity from Fort Dearborn Life Insurance Company to public customers D.J. and F.J.

9. In connection therewith, Bryant failed to give prompt written notice of his engagement of his sale of the Fort Dearborn Life Insurance company fixed index annuity to D.J. and F.J.

11. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 3030.

THIRD CAUSE OF COMPLAINT
Failure to Respond to Requests for Information
Violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210

12. The Department realleges and incorporates by reference paragraph 2 above.

13. On or about March 5 and 14, 2008 and on April 2, 2008, FINRA staff sent Bryant a request for information, invoking Procedural Rule 8210, to Bryant's last known address, "6274 Fairhaven Rd., Mayfield Hts., OH 44124" (the "Fairhaven address"). The 8210 request was not mailed to Bryant's CRD address.

14. Bryant, in each of the request letters, was asked how his recommendation to

liquidate the Genworth annuity and purchase the Fort Dearborn fixed index annuity, on behalf of D.J. and F.J. was suitable. Bryant also was asked his understanding of the customers' liquid net worth, income and financial needs, and what due diligence he performed before liquidating the Genworth annuity in light of their investment objectives, risk tolerance and financial status. The staff further asked Bryant to describe his understanding of the Member's policy regarding outside business activities, and whether the Member required him to disclose all outside activities to the Member and to obtain prior approval from the Member before engaging in such activities. Bryant further was specifically asked whether he disclosed all his outside business activities with an unregistered insurance agent through whom the Fort Dearborn fixed index annuity was purchased, as well as the compensation from those activities, to the Member.

15. Bryant did not respond to the March 5 and 14, 2008, or the April 2, 2008 mailings.

16. On October 6, 2008, FINRA staff sent Bryant another request for information, pursuant to Procedural Rule 8210, to Bryant's CRD address and Fairhaven address. The regular and certified mailings to the CRD address were returned, stamped "Return to Sender; Not Deliverable As Addressed; Unable to Forward." The mailings to the Fairhaven address were not returned. FINRA staff, in this request, repeated the questions asked in the March 5 and 14, 2008, and the April 2, 2008 mailings.

17. Also, on October 6, 2008, FINRA staff spoke with Bryant by telephone. Bryant told the staff that he would answer the questions in the mailings. He gave the staff his email address, and a copy of the Rule 8210 request was also sent to the email address he gave the staff.

18. On November 4, 2008, FINRA staff sent Bryant another request for information,

pursuant to Rule 8210, to Bryant's CRD address and Fairhaven address. The regular mailings, and the certified mailing to the Fairhaven address, were not returned. The certified mailing to the CRD address was returned, stamped "Returned to Sender; Attempted, Not Known."

19. To date, Bryant has failed to respond to each and all of the requests for information as described in Paragraphs 16 and 18 above, and the time and the dates for responding to the requests have passed.

20. The acts, practices, and conduct described above constitute a violation of NASD Conduct Rule 2110 and Procedural Rule 8210 by Bryant.

PRAYER FOR RELIEF

WHEREFORE, Complainant 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 Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Date: December 3, 2008

NASD DEPARTMENT OF ENFORCEMENT



Dale A. Glanzman, Senior Regional Counsel
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