

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH STEPHEN FABIAN
(CRD No. 2580502),

Respondent.

Disciplinary Proceeding
No. 2007008923301

Hearing Officer – SNB

DEFAULT DECISION

April 3, 2009

Respondent is barred from associating with any member firm in any capacity for failing to respond to Staff requests for information, in violation of Rules 8210 and Rule 2110, and for falsifying a document, in violation of Rule 2110. In light of the bars, no further sanctions are imposed for Respondent's participation in outside business activities without providing his firm written notice of those activities, in violation of Rules 3030 and 2110.

Appearances

UnBo Chung, Esq., Chicago, IL, for the Department of Enforcement.

No appearance by or on behalf of Joseph Stephen Fabian.

DECISION

I. Background

On October 9, 2008, the Department of Enforcement ("Enforcement") filed the attached Complaint against Joseph Stephen Fabian ("Respondent"). The Complaint charges Respondent with: (1) falsifying a document to create the appearance that funds paid to Respondent were invested in real estate, in violation of Rule 2110; (2) engaging in outside business activities without first providing his firm with written notice, in

violation of Rules 3030 and 2110; and (3) failing to respond to FINRA Staff's requests for information concerning the foregoing charges, in violation of Rules 8210 and 2110.¹

The Respondent did not answer or otherwise respond to the Complaint.

Consequently, on January 14, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of UnBo Chung and six exhibits. Respondent did not respond to the motion. Accordingly, for the reasons set forth below, the Hearing Officer grants Enforcement's motion.

II. Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD Address"), Respondent's last known business address (the "Business Address"), and to the attorney who represented Respondent in FINRA's investigation of this matter. Enforcement mailed the First Notice of Complaint by first-class and certified mail on October 9, 2008. Respondent did not answer the Complaint. On November 7, 2008, Enforcement served the Second Notice of Complaint and Complaint on Respondent in the same manner, at Respondent's CRD and Business Addresses.² To date, Respondent has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

¹ The FINRA Rules are at www.finra.org/Rules.

² Respondent's counsel informed Staff that he no longer represented Respondent, so Staff did not send the Second Notice of Complaint and Complaint to him.

Respondent defaulted by failing to answer the Complaint.³ Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.

III. Jurisdiction

Respondent became registered with a FINRA member as an investment contract and variable contract representative in 1995. Between October 24, 2003, and May 4, 2007, Respondent was registered as an investment contract and variable contract representative, general securities representative, and general securities principal through FSC Securities Corporation. ("FSC" or the "Firm").

Respondent is not currently associated with a FINRA member firm. Nonetheless, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.⁴

³ Dep't of Enforcement v. Reynolds Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (NAC Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting Lubeck v. SEC, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁴ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

IV. Violations

A. Falsification of Records

The first cause of the Complaint alleges that Respondent falsified a document to create the appearance that funds paid to Respondent were invested in real estate, in violation of Rule 2110. Specifically, the Complaint alleges that in 2005, Respondent proposed that JM pool money with him in order to purchase real estate.⁵ Respondent offered to repay JM's money, plus 7% interest, in two years. In August 2005, JM contributed \$104,000 for the purchase of real estate and requested documentation of his agreement with Respondent. In response, Respondent falsified a document by using a photocopy of a customer stock certificate as a template to create a document entitled "VanBuren Investment Trust LLC Debentures Certificates," despite the fact that there was no such trust. Respondent then presented this document to JM. There is no evidence regarding what Respondent did with the money during the two-year term, though he eventually repaid JM.

Falsifying records is a plain violation of Rule 2110's command to "observe high standards of commercial honor...."⁶ The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated Rule 2110 by falsifying a document to lend a false sense of legitimacy to the investment of JM's funds.

B. Unreported Outside Business Activities

The second cause of the Complaint alleges that Respondent failed to notify his firm of an outside business activity. Specifically, the Complaint alleges that in February

⁵ JM was not a customer of Respondent's firm.

⁶ Dep't of Enforcement v. Schneider, No. C10030088, 2005 NASD Discip. LEXIS 6, at **13-14 (NAC Dec. 7, 2005).

2006, Respondent's Firm changed its policy regarding the sale of equity indexed annuities ("EIAs") to limit such sales only to those specific EIAs approved by the Firm. Despite his knowledge of this new policy, in October 2006 and April 2007, Respondent sold unapproved EIAs to at least six individuals, including one FSC customer. Respondent earned approximately \$14,000 in commissions for these sales. Respondent did not disclose these outside activities to his Firm as he was required to do pursuant to Rule 3030. The Firm was unaware of Respondent's sales of unapproved EIAs.

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 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.⁷ Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.⁸

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated Rules 3030 and 2110 by engaging in outside business activities without first providing his firm with written notice.

C. Failure to Respond to Requests for Testimony

The third cause of the Complaint alleges that Respondent failed to respond to a Rule 8210 requests for information. Specifically, on November 20, 2007, Staff sent a

⁷ Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons, Exchange Act Release No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

⁸ District Bus. Conduct Comm. v. Cruz, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (NBCC Oct. 31, 1997).

request for information to Respondent regarding the real estate transaction alleged in the first cause of the Complaint. Respondent sent a letter to Staff acknowledging receipt of this request but refusing to provide the requested information.

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated Rules 8210 and 2110 by failing to respond to a Staff request for information.

V. Sanctions

The FINRA Sanction Guidelines (“Guidelines”) recommend a bar where a respondent fails to respond in any manner to a request for information pursuant to Rule 8210.⁹ Enforcement requests a bar. There are no mitigating factors that would justify imposition of a lesser sanction. Therefore, the Hearing Officer finds that a bar is the appropriate sanction for Respondent’s failure to respond to Staff’s request for information.

For the falsification of documents in violation of Rule 2110, the Guidelines recommend a fine of \$5,000 to \$100,000 and a suspension for up to two years where mitigating factors exist. In egregious cases, the Guidelines recommend a bar. *Id.* at 39. Enforcement requests a bar. Applying the Principal Considerations for this violation, while Respondent’s wrongdoing involves a single falsified document, it was significant. Its purpose was to mislead an individual who paid Respondent \$104,000 into believing that these funds were invested in a particular investment, when, in fact, they were not. Accordingly, Respondent’s conduct is egregious and warrants a bar. There are no mitigating factors that would justify imposition of a lesser sanction.

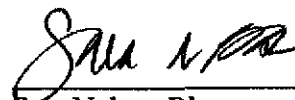
⁹ *Guidelines* at 35 (2007 ed.), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

For undisclosed outside business activities the Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where there are no aggravating circumstances. *Id.* at 14. Where the outside business activities involve aggravating circumstances, the Guidelines recommend consideration of a suspension of up to one year. Enforcement requests a fine of \$10,000 and a 90 day suspension.

Respondent's outside business activities involved aggravating factors that warrant an upward departure from the Guidelines. Respondent engaged in undisclosed outside activities for a six-month period with respect to six individuals including one FSC customer, which activities generated \$14,000 in commissions. Therefore, the Hearing Officer finds that Enforcement's request is appropriate. However, in light of the bars for the other violations, no additional sanctions are imposed for this violation.

VI. Conclusion

Respondent is barred from associating with any member firm in any capacity for failing to respond to a Staff request for information, in violation of Rules 8210 and Rule 2110, and for falsifying a document, in violation of Rule 2110. In light of the bars, no further sanctions are imposed for Respondent's participation in outside business activities without providing his firm written notice of those activities, in violation of Rules 3030 and 2110. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Sara Nelson Bloom
Hearing Officer

Copies to:

Joseph Fabian (*via overnight courier & first-class mail*)

UnBo Chung, Esq. (*via electronic & first-class mail*)

Mark P. Dauer, Esq. (*via electronic mail*)

David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Joseph Fabian (CRD No. 2580502),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007008923301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Joseph Fabian ("Fabian") created a false document by cutting and pasting wording from financial documents onto a stock certificate. Fabian retained legal phrases from the original stock certificate and affixed a gold sticker to create the appearance of legitimacy. Fabian gave this false document to another individual for the purpose of memorializing a loan agreement. Fabian unintentionally sent a copy of the false form to his firm. Fabian's firm's investigation also revealed that Fabian engaged in an unapproved outside business activity. Fabian was terminated and refused to cooperate with a subsequent FINRA investigation.

RESPONDENT AND JURISDICTION

2. Fabian entered the securities industry on January 19, 1995 as an Investment Contracts/Variable Contracts Representative. On July 26, 2000, he became a General

Securities Representative. On August 7, 2000, he became a General Securities Principal. Between the dates of October 24, 2003 and May 4, 2007, he was registered in these capacities with the FSC Securities Corporation ("FSC"), a FINRA member. Fabian is not currently registered with any other FINRA members. Pursuant to Article V, Section 4 of the FINRA By-Laws, Fabian is subject to the jurisdiction of FINRA until May 4, 2009.

FIRST CAUSE OF ACTION
Falsification
(NASD Conduct Rule 2110)

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. In 2005, Fabian proposed that JM pool money with him in order to purchase real estate. JM was *not* a customer of Fabian's firm. Fabian offered to repay JM the principal plus 7% interest in two years.
5. On or about August 13, 2005, JM contributed \$104,000 for the purchase of real estate.
6. On or about September 26, 2005, JM requested documentation evidencing the agreement. Fabian obtained a stock certificate from a FSC customer's account, photocopied it and used it as a template for a document evidencing JM's investment. Fabian used scissors and tape to place wording from other financial documents to outline the terms of the agreement between himself and JM, including a section on "Divdens" (sic). Fabian entitled the document a "VanBuren Investment Trust LLC Debentures Certificates" and left wording from the original stock certificate to create the appearance of legitimacy, including legal language regarding transfers and

countersigning, as well as language indicating that the certificate was registered with a trust company in New York. Fabian also affixed a gold sticker on the certificate to create a further official appearance. Sometime in late 2005, Fabian presented this document to JM as documentation of the loan, despite the fact that VanBuren Investment Trust LLC did not exist.

7. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 by Fabian.

SECOND CAUSE OF ACTION
Undisclosed Outside Business Activities
NASD Conduct Rules 3030 and 2110

8. The Department realleges and incorporates by reference paragraphs 1-7 above.
9. On or about February 10, 2006, Fabian's firm, FSC, changed its policy regarding the sale of equity indexed annuities ("EIAs"). Previously, FSC permitted representatives to sell EIAs as long as they were disclosed as an outside business activity. Effective March 1, 2006, FSC would only permit the sale of EIAs specifically approved by the firm. This change in policy was sent via email and later incorporated into the firm's written supervisory procedures.
10. Despite knowledge of this policy, Fabian sold unapproved EIAs to at least six individuals between the approximate dates of October 2006 and April 2007, including one existing customer of FSC, without providing prompt written notice to FSC in any form. Fabian earned a total of \$14,009.73 in commissions for these sales.
11. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 3030 and 2110 by Fabian.

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

12. On November 20, 2007, FINRA staff sent Fabian a request for information pursuant to NASD Procedural Rule 8210, inquiring into the financing of the real estate transaction with JM and complaints stemming from the EIA sales.

13. On December 7, 2007, Fabian sent FINRA staff a letter acknowledging receipt of the request for information but that he did not intend to respond.

14. The acts, practices and conduct described above constitute separate and distinct violations of NASD Procedural Rule 8210 and Conduct Rule 2110 by Fabian.

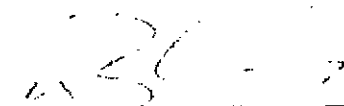
RELIEF REQUESTED

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.
- 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

Date: October 9, 2008



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