

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RONALD DWAYNE JAMES
(CRD No. 2608516),

Respondent.

Disciplinary Proceeding
No. 2007009181901

Hearing Officer – MC

DEFAULT DECISION

June 10, 2009

The 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 for Respondent's unauthorized trading, in violation of Conduct Rule 2110.

Appearances

Jill L. Jablonow, Senior Regional Counsel, Los Angeles, CA, for the Department of Enforcement.

No appearance by or for Respondent Ronald Dwayne James.

DECISION

I. Introduction

On January 27, 2009, the Department of Enforcement ("Enforcement") filed the attached Complaint. The Complaint alleges that Respondent Ronald Dwayne James ("James") effected unauthorized securities transactions in a customer's account in violation of Conduct Rule 2110, and failed to respond to requests for information and

documents issued by FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210.¹

Enforcement served Respondent with the Complaint, Notice of Complaint and Second Notice of Complaint at his residential address recorded in FINRA's Central Registration Depository (the "CRD address") and two other addresses obtained by FINRA staff. Respondent did not answer or respond to the Complaint. Consequently, on April 16, 2009, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by a Memorandum of Points and Authorities, the Declaration of Jill L. Jablonow ("Decl."), and ten exhibits ("Exh."). James did not respond to the Default Motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

James first entered the securities industry on October 19, 1995, when he became registered as a General Securities Representative with a FINRA member firm.³ From July 27, 2006, through June 1, 2007, the period relevant to this matter, he was registered with FINRA member firm TD Ameritrade, Inc. ("Ameritrade") as a General Securities Representative.⁴ While registered with Ameritrade, James was also employed at

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.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Default Motion, the Declaration of Jill L. Jablonow, and the exhibits filed by Enforcement.

³ Exh. 1.

⁴ Decl. ¶ 3; Exh. 1.

Amerivest Investment Management, LLC, as an advisory representative.⁵ On June 1, 2007, Ameritrade filed a Uniform Termination Notice for Securities Industry Registration (Form U5). The Form U5 disclosed that Ameritrade had discharged James after a client contacted the firm about an e-mail notification she had received which indicated that her password had been reset. The client claimed she had not authorized the password reset. Further investigation led Ameritrade to conclude that after gaining access to the client's web access information, James executed trades in the client's account without her knowledge.⁶ James has not been associated with a FINRA member firm since he was terminated by Ameritrade on May 24, 2007.⁷

Even though James has not been registered with FINRA since June 1, 2007, the misconduct alleged in the Complaint occurred while he was associated with a FINRA member firm and the Complaint was issued less than two years after the termination of his registration with FINRA. Thus, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction for purposes of this proceeding.⁸

B. Respondent's Default

Enforcement served James with copies of the Complaint and the First and Second Notices of Complaint by certified and first-class mailings to his CRD address and to two other addresses obtained by the FINRA staff during the course of its investigation in this matter.⁹

⁵ Complaint ¶ 3; Decl. ¶ 3.

⁶ Exh. 2

⁷ *Id.*; Exh. 1 and 2.

⁸ Article V, Sec. 4, FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁹ Decl. ¶ 5.

1. First Notice of Complaint

The Notice of Complaint and the Complaint were served on James on January 27, 2009.¹⁰ The certified and first-class mailings of the Notice of Complaint and Complaint sent to the CRD address were returned marked "Returned to Sender – Attempted Not known."¹¹ The certified mailings sent to the two other addresses were also returned, one marked "Returned to Sender – Unclaimed," and the other "Returned to Sender – Attempted Not Known."¹²

2. Second Notice of Complaint

The Second Notice of Complaint and Complaint were served on Respondent at the same addresses on February 25, 2009.¹³ The certified mailing sent to the CRD address was returned marked "Returned to Sender – Unclaimed," and the first-class mailing was returned marked "Returned to sender – Attempted Not Known."¹⁴ Both the certified and first-class mailings sent to the other addresses were returned, one marked "Returned to Sender – Not Deliverable As addressed" and the other "3/17/09 Moved – Left No Forwarding Address."¹⁵

James did not respond to either the First or Second Notices of Complaint.¹⁶

¹⁰ *Id.*

¹¹ Decl. ¶ 5; Exh. 4.

¹² Decl. ¶ 5; Exh. 5 and 6.

¹³ Decl. ¶ 6.

¹⁴ *Id.*

¹⁵ Decl. ¶ 6; Exh. 9 and 10.

¹⁶ Decl. ¶¶ 5-6.

By these efforts, Enforcement properly served James with the Complaint pursuant to Procedural Rule 9134(b)(1). By failing to answer the Complaint, James defaulted.¹⁷ Accordingly, pursuant to Procedural Rules 9214(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted and Enforcement's Default Motion is granted.

C. Violations

1. Unauthorized Trading

The First Cause of Action in the Complaint alleges that James, on May 21, 2007, engaged in four unauthorized trades in a customer's account, in violation of Conduct Rule 2110. James gained access to the account by contacting Ameritrade's Branch Resource Desk and claiming that his customer, AN, wanted to reset her Ameritrade on-line account password.¹⁸ Once he had the new password, James entered four buy orders on her behalf. In each of these actions, James acted without AN's knowledge, authorization, or consent.¹⁹ On May 22, 2007, in a written statement, James admitted he had not spoken to AN prior to entering the orders and that the transactions were unauthorized.²⁰ By these actions, James violated Conduct Rule 2110.

¹⁷ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural 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)).

¹⁸ Complaint ¶ 6; Decl. ¶¶ 7-8.

¹⁹ Complaint ¶¶ 6-9; Decl. ¶¶ 7-8. The buy orders were canceled by Ameritrade the following day, after AN called the firm to complain that she had not requested the password change and had not authorized the buy orders.

²⁰ Decl. ¶ 8.

2. Failure to Respond to Information Requests

The Second Cause of Action in the Complaint alleges that in June 2007, FINRA initiated an investigation into James' alleged unauthorized trades.²¹ In order to conduct its investigation, the FINRA staff issued a total of seven separate requests for information pursuant to Procedural Rule 8210, the first on June 18, 2007, and the last on August 27, 2008.²² The requests were sent by first-class and certified mail to James' CRD address and to six alternate addresses in New York and California discovered by FINRA staff during the course of its investigation.²³ With two exceptions, the mailings were either not returned or were returned with markings indicating they were unclaimed, unable to be forwarded, or otherwise not deliverable.²⁴ On two occasions, however, return receipts for certified letters sent to one of the alternate addresses in California were returned and appeared to have been signed by Respondent.²⁵ One of the return receipts indicated that James received and signed for the fifth request for information, mailed on July 9, 2008; another return receipt indicated that James received and signed for the seventh, and last, request letter, sent on August 27, 2008.²⁶ Nonetheless, James did not respond to any of the requests for information.

On the basis of these allegations, deemed admitted, James violated Conduct Rule 2110 and Procedural Rule 8210.

²¹ Complaint ¶ 12.

²² Decl. ¶ 9. All of the request letters informed James that his failure to respond may subject him to disciplinary action.

²³ Decl. ¶¶ 10, 13, 16, 19, 22, 25, 28.

²⁴ See, e.g., Decl. ¶¶ 11, 14, 17, 20, 23, 26, 29.

²⁵ Decl. ¶¶ 23, 29.

²⁶ Decl. ¶¶ 23, 29.

III. Sanctions

A. Unauthorized Trading

For engaging in unauthorized trading, the Sanction Guidelines recommend a fine ranging from \$5,000 to \$75,000.²⁷ The Guidelines also recommend adjudicators consider a suspension in any or all capacities for a period of ten business days to one year, and in egregious cases, a suspension of as much as two years, or a bar.²⁸ The two Principal Considerations enumerated by the Guidelines are: (a) whether respondent misunderstood his authority; and (b) whether the unauthorized trading was egregious. Categories of egregious unauthorized trading include: (i) trading rendered egregious by the sheer number of unauthorized trades executed; (ii) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, or trading that causes significant customer loss; and (iii) qualitatively egregious unauthorized trading, as measured by the strength of the evidence and the respondent's motives (i.e., bad faith vs. reasonable misunderstanding).

Enforcement argues that James' unauthorized trading is sufficiently egregious to merit a bar. In this case, however, although the evidence is strong and Respondent clearly did not act under a misunderstanding with his customer, the number of unauthorized trades, totaling four, is small. In addition, the customer suffered no loss as Ameritrade quickly canceled the four buy orders and reimbursed her for the fees assessed for the transactions.²⁹ James' conscious deception of Ameritrade personnel by falsely

²⁷ *FINRA Sanction Guidelines*, 103 (2007), available at <http://www.finra.org/Industry/Enforcement/index.htm> (then follow "Sanction Guidelines" hyperlink).

²⁸ *Id.*

²⁹ Complaint ¶¶ 8-9; Decl. ¶ 35.

stating AN wanted to change the password for her on-line account, so that he could execute the unauthorized trades, is an aggravating factor. Once confronted, however, James immediately admitted his misconduct, making no effort to conceal what he had done, well before FINRA became aware of the incident. For these reasons, James' unauthorized trades in violation of Conduct Rule 2110 were certainly serious, but a lengthy suspension, such as a year in all capacities, would be a sufficiently severe sanction to impose. However, in light of the bar imposed below for James' failures to respond to requests for information, it is unnecessary in this case to impose any additional sanctions for the four unauthorized trades.

B. Failures to Respond

The Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³⁰ Here, there is no evidence of any mitigation to justify a lesser sanction. It appears that James twice signed receipts for certified mailings, showing he had actual notice of the FINRA staff's requests issued to him pursuant to Procedural Rule 8210, and willfully refused to respond. Furthermore, FINRA staff ultimately sent the requests to no fewer than seven addresses linked to James, over a period of approximately 14 months.

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

³⁰ *Guidelines*, at 35.

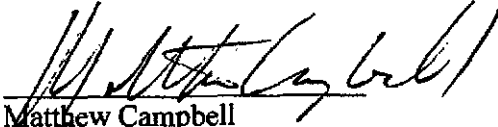
information.”³¹ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”³²

A bar, therefore, is the appropriate sanction for Respondent’s violations of Conduct Rule 2110 and Procedural Rule 8210 by failing to respond in any manner to multiple requests for information issued to him by FINRA staff, as alleged in the Second Cause of the Complaint.

IV. Order

Respondent Ronald Dwayne James is barred from association with any FINRA member firm in all capacities for failing to respond to requests for information issued from FINRA staff pursuant to Rule 8210, 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.


Matthew Campbell
Hearing Officer

Copies to:

Ronald D. James (via FedEx and first-class mail)
Jill L. Jablonow, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

³¹ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

³² *Id.* at *41.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Ronald Dwayne James (CRD No. 2608516),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007009181901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Ronald Dwayne James, while associated with TD Ameritrade, Inc., effected unauthorized securities transactions in a customer's account, in violation of NASD Conduct Rule 2110. In order to gain access to the customer's account, James requested that Ameritrade personnel reset the password on the customer's online account and provide him with the new password. He then effected the transactions in the account without the customer's knowledge, authorization or consent.

2. FINRA staff sent James seven Rule 8210 requests for information and documents regarding the unauthorized transactions effected in his customer's account. James failed to respond to any of these requests in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

3. From July 5, 2006 through May 24, 2007, James was associated with FINRA member TD Ameritrade, Inc. as a General Securities Representative. While associated with Ameritrade, James was also employed at Amerivest Investment Management, LLC, as an advisory representative. James has not been associated with a member firm since he was terminated by Ameritrade on May 24, 2007. Accordingly, pursuant to Article V, Section 4 of FINRA's By-Laws, James remains subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION (Unauthorized Trading) (Violation of NASD Conduct Rule 2110)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.

5. On November 27, 2006, customer AN opened a Simplified Employee Pension IRA with Ameritrade, funded with \$18,600.00. On the same day, AN completed an Amerivest Risk Questionnaire. In response to AN's answers, Ameritrade automatically generated a recommended security portfolio of exchange-listed funds. AN decided not to accept the recommendations or execute the recommended transactions. There was no activity in the account until James executed the unauthorized transactions.

6. Without AN's knowledge or consent, on May 21, 2007, James called the Ameritrade Branch Resource Desk and indicated that his customer, AN, wanted to reset her Ameritrade on-line account password. At James's request, Ameritrade personnel provided him with a new password for AN's account.

7. On May 21, 2007, following James's unauthorized change of AN's password, James accessed AN's account and entered four buy orders, specifically: (i) 63 shares of IShares

Russell 1000 Index Fund at 83.110 per share, for a total purchase of \$5,235.93; (ii) 177 shares of BLDRS 100 ADR Index at 32 per share, for a total purchase of \$5,664.00; (iii) 75 shares of Vanguard Index Trust Com at 74.690 per share, for a total purchase of \$5,601.75; and (iv) 20 shares of IShares Lehman Agg Bond Fund at 99.640 per share, for a total purchase of \$1,992.80.

8. On May 21, 2007, Ameritrade sent an email to AN confirming that her password had been changed. On May 21, 2007, just before midnight, AN telephoned Ameritrade and informed firm personnel that she did not request the password change and that she did not place any orders in her account. As a result, Ameritrade froze AN's account.

9. During the morning of May 22, 2007, an Ameritrade representative contacted AN concerning her complaint. AN informed Ameritrade that she did not place any trades in her account and did not give anyone the authority to do so. She stated that all of the transactions in her account were unauthorized. Ameritrade cancelled the unauthorized transactions.

10. Executing transactions without a customer's prior authorization and consent, as described above, constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade. Each such transaction constitutes a separate and distinct violation of NASD Conduct Rule 2110 by Respondent James.

**SECOND CAUSE OF ACTION
(Failure to Respond to Requests for Information)
(Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)**

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.

12. In or about June 2007, FINRA initiated an investigation concerning the unauthorized transactions that were executed in AN's account. The staff requested information and documents from James, pursuant to Rule 8210, on seven occasions: June 18, 2007, July 18,

2007, August 9, 2007, February 20, 2008, July 9, 2008, August 8, 2008, and August 27, 2008.

Each of these requests cited to Rule 8210 and stated that the failure to respond to the request may subject James to disciplinary action.

First Request for Information

13. On June 18, 2007, the staff sent the first request for information letter to James, requiring a response by July 2, 2007. The letter was sent by first class and certified mail to James's last known residential address, as reflected in the FINRA Central Registration Depository: [REDACTED] (CRD Address).

14. The first class letter was not returned and the certified letter was returned marked "unclaimed."

15. James did not respond to the first request letter.

Second Request for Information

16. On July 18, 2007, the staff sent a second letter to James, requesting the same information contained in the first request letter, and requiring a response by August 1, 2007. The letter was sent by first class and certified mail to James's CRD Address and one additional potential address identified for James: [REDACTED] (the Paseo Ensillar Address).

17. The first class letters sent to the CRD Address, and to the Paseo Ensillar Address were not returned. The certified letter sent to the CRD Address was returned marked "unable to forward." The certified letter sent to the Paseo Ensillar address was returned marked "unclaimed" and "unable to forward."

18. James did not respond to the second request letter.

Third Request for Information

19. On August 9, 2007, the staff sent a third letter to James, requesting the same information contained in the first request letter, and requiring a response by August 23, 2007. The letter was sent by first class and certified mail to James's CRD Address, and three additional potential addresses found for James: [REDACTED] (the Hett Ave. Address); [REDACTED] (the Cottonwood Ct. Address); and [REDACTED] (the Colon St. Address).

20. The first class letter sent to the CRD Address was not returned and the certified letter was forwarded to an unspecified address and returned. The first class and certified letters sent to the Hett Ave. Address were returned marked "not deliverable as addressed" and "unable to forward." The first class and certified letters sent to the Cottonwood Ct. Address were returned marked "attempted not known" and "unable to forward." The first class letter sent to the Colon St. Address was not returned and the certified letter was signed for on August 13, 2007, but the signature was illegible.

21. James did not respond to the third request letter.

Fourth Request for Information

22. On February 20, 2008, the staff sent a fourth letter to James, requesting the same information contained in the first request letter, and inadvertently requiring a response by March 5, 2007, rather than March 5, 2008. The letter was sent by first class and certified mail to James's CRD Address, the Hett Ave. Address, the Colon St. Address, the Paseo Ensillar Address, and two additional potential addresses found for James: [REDACTED] [REDACTED] (the Corte Valdez Address); and [REDACTED] (the Luciernaga St. Address).

23. The first class letter sent to the CRD Address was returned marked "unclaimed," "attempted not known" and "unable to forward." The certified letter sent to the CRD address was returned marked "unclaimed" and "notify sender of new address" (the Luciernaga St. Address). The first class letter sent to the Hett Ave. Address was not returned and the certified letter was returned marked "unclaimed" and "unable to forward." The first class letter sent to the Colon St. Address was not returned and the certified letter was returned marked "attempted not known." The first class letter sent to the Paseo Ensillar Address was returned marked "not deliverable as addressed" and "unable to forward." The certified letter sent to the Paseo Ensillar Address was returned marked "attempted not known," "not deliverable as addressed" and "unable to forward." The first class letter sent to the Corte Valdez Address was returned marked "unclaimed," "attempted not known" and "unable to forward." The certified letter sent to the Corte Valdez Address was returned marked "notify sender of new address" (the Luciernaga St. Address). The first class letter sent to the Luciernaga St. Address was returned marked "unclaimed," "attempted not known" and "unable to forward" and the certified letter was returned marked "unclaimed."

24. James did not respond to the fourth request letter.

Fifth Request for Information

25. On July 9, 2008, the staff sent a fifth letter to James, requesting the same information contained in the first request letter, and requiring a response by July 23, 2008. The letter was sent by first class and certified mail to James's CRD Address, the Luciernaga St. Address, the Hett Ave. Address, the Colon St. Address, the Corte Valdez Address, and the Paseo Ensillar Address.

26. The first class and certified letters sent to the CRD Address were returned marked "attempted not known" and "unable to forward." The first class letter sent to the Luciernaga St. Address was not returned. The return receipt (green card) for the certified letter sent to the Luciernaga St. Address was returned, appearing to bear the signature of "Ronald D. James." The first class letter sent to the Hett Ave. Address was not returned and the certified letter was returned marked "unclaimed" and "unable to forward." The first class letter sent to the Colon St. Address was not returned and the certified letter was returned marked "returned for carrier endorsement." The first class letter sent to the Corte Valdez Address was not returned and the certified letter was returned marked "forward time expired," but listed the forwarding address as [REDACTED] (the Ruffino Rd. Address). The first class letter sent to the Paseo Ensillar Address was returned marked "unable to forward" and "not deliverable as addressed" and the certified letter was returned marked "attempted not known" and "unable to forward."

27. James did not respond to the fifth request letter.

Sixth Request for Information

28. On August 8, 2008, the staff sent a sixth letter to James, requesting the same information contained in the first request letter, and requiring a response by August 15, 2008. The letter was sent by first class and certified mail to James's CRD Address, the Luciernaga St. Address, and the Ruffino Rd. Address.

29. The first class letter sent to the CRD Address was returned marked "forward time expired" and the certified letter was returned marked "unclaimed." The first class letter sent to the Luciernaga St. Address was not returned and the certified letter was returned marked "unclaimed," and "notify sender of new address," listing the Ruffino Rd. Address. The first

class letter sent to the Ruffino Rd. Address was not returned and the certified letter was returned marked "unclaimed."

30. James did not respond to the sixth request letter.

Seventh Request for Information

31. On August 27, 2008, the staff sent a seventh letter to James, requesting the same information contained in the first request letter, and requiring a response by September 3, 2008. The letter was sent by first class and certified mail to James's CRD Address, the Luciernaga St. Address, and the Ruffino Rd. Address.

32. The first class letter sent to the CRD Address was returned marked "attempted not known and "unable to forward" and the certified letter was returned marked "unclaimed." The first class letter sent to the Luciernaga St. Address was not returned. The return receipt (green card) for the certified letter sent to the Luciernaga St. Address was returned, appearing to bear the signature of "Ronald D. James." The first class letter sent to the Ruffino Rd. Address was not returned and the certified letter was returned marked "unclaimed."

33. James did not respond to the seventh request letter.

34. Each failure to provide information requested by FINRA staff pursuant to Procedural Rule 8210, as described above, constitutes a separate and distinct violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by James.

RELIEF REQUESTED

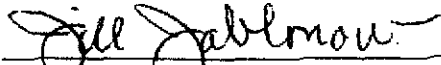
WHEREFORE, the Department respectfully requests that the Panel:

A. order that one or more of the sanctions provided under FINRA 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 FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 27, 2009



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