

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

Department of Enforcement,

Complainant,

v.

Gregory Arthur Niebler,
CRD No. 716226,

Respondent.

Disciplinary Proceeding
No. 20070094052

Hearing Officer Lawrence B. Bernard

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: September 20, 2010

INTRODUCTION

Disciplinary Proceeding No. 20070094052 was filed on December 23, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Gregory A. Niebler ("Respondent") submitted an Offer of Settlement (Offer) to Complainant dated September 12, 2010. Pursuant to FINRA 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 FINRA 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

findings and violations consistent with the allegations of the Complaint,¹ 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

Respondent entered the securities industry in June 1980 when he became associated with a member firm. Respondent passed the Series 7 and 63 examinations and became a branch manager in January 1986. That member firm was purchased by Dain Bosworth in 1988 and became Dain Rauscher Incorporated, and then RBC Dain Rauscher Inc. ("RBC" or the "Firm"), a member of FINRA. Respondent served as a registered representative and assistant branch office manager of RBC until May 2004.

From May 2004 to January 2010, Respondent was employed with another FINRA member firm, and is subject to the jurisdiction of FINRA pursuant to Article V, Section 4 of FINRA's By-Laws.

Respondent has no disciplinary actions against him in the last five years.

FINDINGS AND CONCLUSIONS

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

Summary

1. Between April 2000 and September 2004, Respondent received money totaling approximately \$358,000 from an elderly customer, DL, in the form of personal checks from DL's

¹ Respondent has submitted this Offer consistent with the Complaint with the exception of the fifth cause of the action in the Complaint pertaining to the discretionary transactions in the customer's account (paragraphs 6, 44-49 of the Complaint), which has been omitted from the Offer and this Order for the purpose of settling this matter.

bank account written directly to him or his credit card companies to pay down his credit card debt.

2. In 1999, Respondent was appointed a power of attorney over DL.

3. Beginning in April 2000, Respondent began receiving money from DL on a consistent basis.

4. As of November 2002, DL was diagnosed by a physician as being incompetent, suffering from dementia and Alzheimer's disease. After DL became incompetent, Respondent received at least \$172,900 from DL's bank account, vis-à-vis checks directly to him and/or to his credit card company.

5. Respondent invoked his power of attorney to sign DL's name to certain of the checks he received or which were sent to his credit card company.

6. Respondent denied the receipt of money from DL to the Firm, falsely stating on multiple annual compliance questionnaires that he had not received any gifts valued in excess of \$100 from any of his customers when he was receiving substantial amounts of money from DL's bank account.

7. Respondent did not report that he had obtained a power of attorney for DL to his member firm employer by not disclosing it in responses to annual compliance questionnaires.

8. By virtue of the aforementioned conduct, Respondent violated NASD Rule 2110.

Background of Customer

9. DL was born in [REDACTED], never married, did not have any children or close relatives, and lived alone. In or around 1985, DL opened an account with Respondent at RBC. According to an updated account information form dated September 15, 1999, DL's liquid assets were \$50,000 and her net worth was \$1,500,000.

10. Toward the latter part of 1999, DL moved into an assisted living facility in Menomonee Falls, WI. Leading up to November 11, 2002, DL's mental capacity began to deteriorate. From at least November 11, 2002, DL was mentally incompetent. She entered the Alzheimer's unit at the assisted living facility in 2004.

11. DL passed away in November 2004.

Misrepresentations to the Firm

12. For several years beginning in 2000 until shortly before DL's death, Respondent received money from DL in the form of personal checks from DL's checking account.

13. From 2000 to 2004, Respondent received approximately \$358,000 in checks from DL's bank account, receiving checks paid to himself or his credit card company.

14. RBC had specific policies and procedures related to the receipt of gifts from customers. During the relevant period, the firm's procedures stated:

"An employee may not accept gifts of over \$100 in value from anyone with whom Dain Rauscher does or may do business. Similarly, an employee should not offer more than nominal gifts, in order to avoid the appearance of trying to improperly influence the conduct of another.

"Whether an employee is dealing with customers, vendors, competitors or governmental or regulatory authorities, the offer of a gift may raise ethical concerns. The \$100 limit on gifts is designed to permit only those **de minimis** offers that do not create the appearance of improper influence or conflict of interest. The limit, however, is not a complete substitute for the employee's judgment. Even a gift under the limit may create the appearance of a conflict of interest – for example, if it is one of several gifts, each under \$100, within a short time. If the gift would appear inappropriate, the employee must reject it. A gift to an immediate family member is the same as a gift to the employee for purposes of this policy."

(Emphasis in original)

15. Respondent did not report his receipt of approximately \$358,000 from DL to the Firm, knowing that the Firm prohibited him from receiving more than \$100 in the form of cash or gifts from any customer.

16. RBC's compliance questionnaire for its registered representatives in 2000, which Respondent signed on August 31, 2000, asked, "Employees are allowed to accept or give gifts of up to what value from clients or vendors?" Respondent checked off the box representing "\$100," acknowledging his understanding of the Firm's policies regarding the acceptance of gifts.

17. The compliance questionnaires in each of the years 2001, 2002 and 2003, asked "In the past 12 months have you given or received cash or a gift valued in excess of \$100 to/from a client?"

18. In responses dated May 8, 2001, April 19, 2002, and September 22, 2003, respectively, Respondent responded, "No." Each of the above-referenced questionnaires required Respondent to attest that his responses were true and accurate to the best of his ability, and he signed each of said questionnaires.

19. Given that he had received substantial sums of money in excess of \$100 from DL during the time periods covered by the respective questionnaires, these attestations were false.

20. Accordingly, Respondent violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by denying his receipt of approximately \$358,000 from an elderly customer to the Firm.

Improper Receipt of Money from an Elderly Customer

21. Leading up to November 11, 2002, DL's mental capacity began to deteriorate. From at least November 11, 2002, DL became mentally incompetent.

22. After such deterioration began to occur and after she became mentally incompetent, Respondent improperly received checks payable directly to him and checks payable to his credit card companies from DL.

23. From November 11, 2002, Respondent received a total of at least 24 improper payments from DL's bank checking account for a total of at least \$172,900.

24. Accordingly, Respondent violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by improperly receiving money from DL after she was incompetent.

Abuse of Power of Attorney to Obtain Funds from an Elderly Customer

25. In or around September 1999, DL appointed Respondent to act as her power of attorney. The power of attorney did not specifically allow Respondent to transfer property to himself or to make gratuitous transfers from DL to himself.

26. Among other things, the power of attorney permitted Respondent to "sign in [DL's] name checks or orders on all accounts in [DL's] name or for [DL's] benefit," "withdraw funds from said accounts" and "open accounts in [DL's] name." With respect to securities, the power of attorney permitted Respondent to "buy, sell, pledge, exchange, etc., securities of all kinds" and "sign and deliver in [DL's] name transfers and assignments of securities."

27. Under Wisconsin law, as a power of attorney for DL, Respondent had a duty to exercise his power of attorney solely in the best interest of DL and could not transfer money to himself absent explicit written authorization from DL.

28. Between April 2000 and September 2004, Respondent used the power of attorney to complete and sign DL's name on DL's personal checks from DL's bank account written out to Respondent or his credit card companies.

29. In effecting the transfer of funds for his benefit from DL to himself or to his credit card company, Respondent acted contrary to his duty as a power of attorney in that he failed to act solely in the best interest of DL and he did not have explicit written authorization from DL to transfer money to himself.

30. Accordingly, Respondent violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by abusing his power of attorney to improperly transfer money from DL to himself.

Failure to Disclose Power of Attorney to His Member Firm Employer

31. RBC had specific policies and procedures related to obtaining powers of attorney for customer accounts. During the relevant period, it stated:

“Situations may arise when the owner or owners of an account wish to grant authority over the account to a third party, who is frequently called an “agent.” Documentation of such third party authorization must be provided by the client, and is subjected to the strictest interpretation. **Note: Employees of Dain Rauscher must receive written approval from their immediate supervisor and the Compliance Department prior to acting as an agent for any public person.**” ...

“Note: Employees of Dain Rauscher may not act as Power of Attorney for any member of the public (except family members) except in extraordinary circumstances and only with the prior written approval of the Compliance Department.”
(Emphasis in original)

32. Respondent did not receive written approval from the Firm to act as power of attorney for DL.

33. RBC required each registered representative to complete an annual compliance questionnaire which required the registered representative to attest that his responses were true and accurate to the best of his ability. In 2000 and 2001, the questionnaire’s asked whether Respondent had power of attorney or trading authorization for any customer account. In

responses dated August 31, 2000, and May 8, 2001, Respondent answered "Yes," but disclosed only his family trust accounts. Respondent's attestations were rendered false by his omission of the power of attorney he had for DL.

34. Respondent did not report to the Firm that he had received a power of attorney from DL.

35. Accordingly, Respondent violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by making material misstatements to his member firm employer.

SANCTIONS

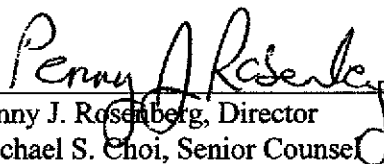
It is ordered that Respondent be barred from associating with any member firm.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(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


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