

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TYLER ANDERS WALTSAK
(CRD No. 2964921),

Respondent.

Disciplinary Proceeding
No. 20070094119

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

January 29, 2009

Respondent is barred from associating with any member firm in any capacity for failing to respond to requests for information issued by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent also violated Conduct Rules 3030 and 2110 by engaging in outside business activities without providing his firm written notice of his activities. However, in light of the bar, no additional sanctions were imposed for this violation.

Appearances

David Camuzo, Senior Counsel, New York, NY, for the Department of Enforcement.

No appearance by or on behalf of Tyler Anders Waltsak.

DECISION

I. Introduction

On July 24, 2008, the Department of Enforcement (“Enforcement”) filed the attached Complaint against Tyler Anders Waltsak (“Waltsak”). The Complaint charges that Waltsak: (1) engaged in outside business activities without first providing his firm with written notice of his activities, in violation of NASD Conduct Rules 3030 and 2110; and (2) failed to respond to a

request for information issued by FINRA staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110.¹

Enforcement served Waltsak with notice of the Complaint on July 23, 2008, and on August 22, 2008, by first-class certified mail sent to him at his most current residential address recorded in the Central Registration Depository (the "CRD Address"). Waltsak did not respond to either notice, and to date he has not filed an Answer with the Office of Hearing Officers.²

On October 15, 2008, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions with the Office of Hearing Officers. The motion is supported by the Declaration of David Camuzo and 18 exhibits. Waltsak did not file a response to the motion.

Waltsak defaulted by failing to answer the Complaint.³ Accordingly, pursuant to Procedural 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.⁴

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Waltsak entered the securities industry with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and became registered as a General Securities Representative in 1997.⁵ On March 1, 2006, Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on Waltsak's behalf that indicated that Merrill Lynch had

¹ FINRA's Procedural Rules are available at www.finra.org/Rules.

² Camuzo Decl. ¶¶ 25-31.

³ *Department of Enforcement v. Reynolds 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)).

⁴ The factual determinations in this Default Decision are based on the allegations in the attached Complaint and the materials filed by Enforcement with its motion.

⁵ Ex. 1, at 7.

discharged him on February 3, 2006, for his “failure to comply with the firm’s policy regarding employee personal accounts.”⁶ Thereafter, A.G. Edwards & Sons, Inc. (“A.G. Edwards”) hired Waltsak, where he was registered as a General Securities Representative from May 5, 2006, until April 2, 2007.⁷ A.G. Edwards discharged Waltsak for failure to follow “industry rules and regulations.”⁸ Waltsak has not since been associated with a FINRA member firm or registered with FINRA.

FINRA has jurisdiction to bring this action against Waltsak pursuant to Article V, Section 4 of FINRA’s Bylaws. Enforcement filed the Complaint within two years following the termination of his last registration with FINRA and the Complaint charges him with misconduct that commenced while he was associated with Merrill Lynch as well as failing to provide information requested by FINRA within the two-year period following his registration termination pursuant to Rule 8210.⁹

B. Unreported Outside Business Activities

The First Cause of the Complaint alleges that in January 2005 Waltsak purchased two rental properties in New Jersey, and in February 2005 he formed a limited liability company, Kenwalt, LLC, to manage the properties. As an officer and general partner of Kenwalt, Waltsak had the authority to write checks on the bank account he opened for Kenwalt at Manasquan Savings Bank in Spring Lake, New Jersey.¹⁰ Waltsak’s purpose in purchasing the properties was to earn rental income and then sell the properties for a gain after about a year.¹¹

⁶ Ex. 2.

⁷ Ex. 1.

⁸ Ex. 3.

⁹ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow “FINRA Manual” hyperlink to “Corporate Organization: Bylaws”).

¹⁰ Camuzo Decl. ¶ 9.

¹¹ *Id.* ¶ 12.

In late 2005 and early 2006, Waltsak transferred money between his securities account at Merrill Lynch and the Kenwalt bank account. Merrill Lynch began an investigation into this activity after the firm was notified that his Merrill Lynch account did not contain sufficient funds to cover certain checks he had drawn on that account. After an internal inquiry, Merrill Lynch terminated Waltsak's employment on February 3, 2006.¹²

During the course of Enforcement's investigation, Waltsak admitted that he did not report any of his outside business activities to Merrill Lynch. He further acknowledged that he knew it was a violation of Merrill Lynch's policy to conduct an outside business without the firm's approval.¹³

NASD 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.¹⁴ Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.¹⁵

¹² Camuzo Decl. ¶ 14.

¹³ *Id.* ¶ 15; Ex. 6.

¹⁴ *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).

¹⁵ *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (N.B.C.C. Oct. 31, 1997).

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Waltsak violated Conduct Rules 3030 and 2110 by failing to provide Merrill Lynch with written notice of his outside business activities.¹⁶

C. Failure to Respond to Requests for Information

The Second Cause of the Complaint alleges that Waltsak failed to respond to a request for information issued by Enforcement on September 21, 2007, pursuant to NASD Procedural Rule 8210. Enforcement sent the request by first-class mail to Waltsak at his CRD Address. Enforcement requested Waltsak to submit documents and information relating to his outside business activities and the circumstances surrounding the termination of his employment with A.G. Edwards, including customer HW's complaint that accused Waltsak of effecting unauthorized trades in his account.¹⁷ Waltsak did not respond to the request for information, and he therefore violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. Failure to Respond to Requests for Information

The FINRA Sanction Guidelines ("Guidelines") recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹⁸ Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years.

The Hearing Officer finds that a bar is the appropriate sanction under the facts and circumstances of this case. "A complete failure to respond to a request for information ... renders

¹⁶ *Department of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (N.A.C. Dec. 7, 2005).

¹⁷ The same information had been requested by the Division of Enforcement of NYSE Regulation, Inc. pursuant to NYSE Rule 477 by letters dated November 2, 2006 and April 27, 2007. Camuzo Decl. ¶¶ 14-21.

¹⁸ FINRA Sanction Guidelines 35 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."¹⁹ Here the record reflects no mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer will bar Waltsak from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

B. Outside Business Activities

The Guidelines governing outside business activities recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where there are no aggravating circumstances.²⁰ Where the outside business activities involve aggravating circumstances, the Guidelines recommend consideration of a suspension of up to one year. In egregious cases involving substantial activity or significant injury, the Guidelines recommend consideration of a longer suspension or a bar.

Here, there is no evidence of any aggravating factors. Waltsak's real estate investment did not involve Merrill Lynch customers, and none of his customers was harmed as a result of his outside business activity. In addition, there is no evidence that he created the impression that Merrill Lynch was involved in his real estate investment. Under these circumstances, the Hearing Officer concludes that a sanction at the lower end of the recommended range would be appropriate. However, the Hearing Officer will not impose an additional sanction for this violation in light of the fact that Waltsak is barred for his violation of Procedural Rule 8210 and Conduct Rule 2110.²¹

¹⁹ *Geoffrey Ortiz*, Exchange Act Release No. 58,416, 2008 SEC LEXIS 2401, at *31 (Aug. 22, 2008).

²⁰ Sanction Guidelines at 14.

²¹ Enforcement did not request that Waltsak be sanctioned for his outside business activity if he was barred on the other charge.

IV. Order

Tyler Anders Waltsak is barred from associating with any member firm in any capacity for failing to respond in any manner to FINRA's request for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

A handwritten signature in black ink, appearing to read 'A. Perkins', is written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Tyler Anders Waltsak (FedEx, next day delivery, and first-class mail)
David Camuzo, Esq. (electronic and first-class mail)
Mark P. Dauer, Esq. (electronic mail)
David R. Sonnenberg, Esq. (electronic mail)

Original

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

Tyler A. Waltsak (CRD No. 2964921),

Respondents.

DISCIPLINARY PROCEEDING
No. 20070094119

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT

1. Respondent Tyler Anders Waltsak ("Waltsak") entered the securities industry in 1997 as a registered representative with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm" or "Merrill Lynch").

2. On March 1, 2006, Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration (the "Form U-5") reporting that Waltsak's employment was terminated on February 3, 2006 for Waltsak's "failure to comply with the firm's policy regarding personal accounts." In May 2006, Waltsak was hired by A.G. Edwards & Sons ("A.G. Edwards"). On April 2, 2007, A.G. Edwards filed a Form U-5 reporting that Waltsak's employment was terminated on March 12, 2007 based upon Waltsak's failure to follow "industry rules and regulations." Since his termination, Waltsak has not associated with another member firm.

3. Waltsak is subject to FINRA's jurisdiction pursuant to Article V, § 4 of NASD's By-Laws because:

- a. this Complaint is being filed within two years after the effective date of termination of Respondent's association with A.G. Edwards; and
- b. this Complaint is based upon Respondent's failure to obtain written permission from his employer prior to engaging in outside business activities and his failure to provide information requested by FINRA pursuant to NASD Rules during such time as he was subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION
(Undisclosed Outside Business Activity (NASD Rules 3030 and 2110))

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

4. In January 2005, Waltsak purchased two rental-income producing investment properties in Manasquan, New Jersey. On February 16, 2005, Waltsak formed a limited liability company entitled Kenwalt, LLC (the "LLC") to manage the properties and protect his investments. Sometime thereafter, Waltsak opened up a bank account for the LLC (the "LLC Bank Account") with Manasquan Savings Bank, Spring Lake, New Jersey. The New Jersey Division of Revenue's Corporate Records Unit listed Waltsak as an officer and general partner of the LLC. In his capacity as an officer of the LLC, Waltsak was empowered to write checks on behalf of the LLC. On May 17, 2007, a certificate of cancellation was filed with the New Jersey Division of Revenue which resulted in the dissolution of the LLC. Waltsak did not report his real estate purchases or the creation of the LLC to Merrill Lynch, his employer at the time of the events in question.

5. In a letter dated April 10, 2006 (the "April 10 Letter"), Waltsak responded to Enforcement's¹ request for a written explanation with respect to the allegation that Waltsak was "terminated [from Merrill Lynch] for failure to comply with Firm policy regarding personal accounts." In the April 10 Letter, he acknowledged that the purpose of purchasing the properties was to obtain summer-rental income from these properties and that the LLC was created to protect him from personal liability for any event arising from the ownership of the properties.

6. In another letter to Enforcement, dated October 6, 2006, (the "October 6 Letter"), Waltsak stated that his goal was to "hold onto the properties for about a year," receive income from the summer rentals and then sell the properties after the "first rental season" (summer of 2005).

7. Waltsak also stated in the October 6 Letter that, sometime between January 2005 and 2006, he sold the investment properties and wired the proceeds into his LLC Bank Account. Between late 2005 and early 2006, Waltsak issued checks from his LLC Bank Account to his Merrill Lynch employee securities accounts and from his employee securities accounts to his LLC Bank Account.

8. Waltsak's checking activity later came under scrutiny by Merrill Lynch because the Firm received information that checks issued from Waltsak's employee securities accounts did not contain sufficient funds. After an internal inquiry by Merrill Lynch into Waltsak's activities in connection with the LLC and LLC Bank Account, the Firm terminated Waltsak's employment on February 3, 2006.

9. In both the April 10 Letter and October 6 Letter to Enforcement, Waltsak admitted that he had engaged in outside business activities and did not disclose those activities to

¹ At the time that Waltsak sent the April 10 Letter, Enforcement was a division of NYSE Regulation, Inc. ("NYSE Regulation"). Enforcement remained a division of NYSE Regulation until its merger with the NASD on July 26, 2007.

Merrill Lynch. Specifically, in the April 10 Letter he made the following admission: "I failed to disclose to Merrill Lynch my interest in these properties at the time the LLC was established or afterwards as required. I understand that having an outside business is permitted upon approval from my employer, although I failed to do so." Moreover, Waltsak also conceded in that letter "that not disclosing my outside interest is a violation of firm policy, and I have to take responsibility for my actions or lack thereof." In the October 6 Letter to Enforcement, he further stated that he "did not report the establishment of the LLC in a timely manner as [he] was required to do" and that he was "fully aware of [the] responsibilities to report and failed to do so."

10. The Firm's policies and procedures regarding outside business activity prohibited employees from engaging in outside business activity without first making a written request and receiving written approval to engage in such activity. These policies state:

You must disclose any outside interest or activity to your manager at the time of initial employment by Merrill Lynch, prior to the time the outside interest arises, or prior to making the investment. Outside interests that require disclosure include but are not limited to: outside employment, investments, business interests and affiliations, participations in limited partnerships, transactions involving security positions not carried in an employee account at the Firm (investment letter stock or a position for which the employee has taken delivery), and any public office or outside directorship. (Section VII of the Merrill Lynch Compliance Outline for Private Client Financial Advisors (the "Compliance Outline").

11. Firm documents show that on September 20, 2005, Waltsak signed the compliance attestation form given to him by the Firm. This form stated that Waltsak read and agreed to comply with the policies set forth in the Compliance Outline. Thus, Waltsak was on notice of these policies and procedures and aware of his responsibilities with regard to reporting outside business activity.

12. As described above, Waltsak was engaged in a business activity outside the scope of his employment at Merrill Lynch and failed to provide notice of that activity to the Firm, including notice in writing. The above acts, practices and conduct set forth in paragraphs 4-11, constitute separate and distinct violations of NASD Conduct Rule 3030 and 2110 by Waltsak.

SECOND CAUSE OF ACTION
(Failure to Respond to Rule 8210 Requests for Information-
NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110)

13. The Department realleges and incorporates by reference paragraphs 1-11 above.

Enforcement's 1st Request For Documents And Information

14. On November 2, 2006, in accordance with Rule 477² of the New York Stock Exchange, LLC ("NYSE"), Enforcement sent a letter, by certified mail, return receipt requested to Waltsak at his place of employment as listed on the Central Registration Depository (the "CRD"): A.G. Edwards & Sons, Inc., 2007 Highway 35, Wall Township New Jersey 07719 (the "November 2 Letter"). The November 2 Letter requested documents and information regarding Waltsak's two investment properties, the LLC and the LLC Bank Account. The November 2 Letter also instructed Waltsak to respond on or before November 28, 2006. On November 6, 2006, Ann Murray, a receptionist at the A.G. Edwards, Wall Township, New Jersey branch office signed the return receipt and accepted delivery for the November 2 letter. To date, Enforcement has not received a response to the November 2 Letter.

15. On April 27, 2007 (the "April 27 Letter"), by certified mail, return receipt requested, Enforcement sent Waltsak a letter to his residential address, as reflected in CRD: [REDACTED]
[REDACTED] The April 27 Letter requested the documents and

² NYSE Rule 477 *Retention of Jurisdiction - Failure to Cooperate* provides that any person within NYSE's jurisdiction mandate must fully cooperate with Enforcement and that the failure to do so may lead to the institution of formal disciplinary proceedings resulting in sanctions including, but not limited to, a permanent bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

information demanded in the November 2 Letter . The April 27 Letter also instructed Waltsak that, in accordance with NYSE Rule 477, his failure to supply the documents and information requested in the November 2 Letter might result in the initiation of formal disciplinary action against him. On May 15, 2007, the April 27 Letter was returned to Enforcement by the United States Postal Service (the "Post Office") marked "unclaimed."

Enforcement's Request For A Written Explanation Regarding An Additional Customer Complaint

16. On or about April 2, 2007, the NYSE received notice via a Form U-5 that Waltsak's employment with A.G. Edwards was terminated on March 12, 2007 based upon Waltsak's failure to follow "industry rules and regulations." Shortly before Waltsak's termination of employment, a customer, HW, filed a customer complaint with A.G. Edwards alleging that Waltsak had effected unauthorized trades in HW's securities account. On April 27, 2007, in accordance with NYSE Rule 477, Enforcement sent a letter (the "April 27 Jurisdiction³ Letter"), by certified mail, return receipt requested, to Waltsak at his residential address as reflected in CRD requesting a written explanation in response to customer HW's allegations. The April 27 Jurisdiction Letter instructed Waltsak to respond on or before May 17, 2007. The April 27 Jurisdiction Letter was returned by the Post Office to Enforcement marked "unclaimed."

17. On May 11, 2007, by first class mail under a separate cover letter addressed to Waltsak's residential address as reflected in CRD, Enforcement sent Waltsak a copy of the April 27 Jurisdiction Letter, (the "May 11 Letter"). The May 11 Letter was not returned to Enforcement.

³ Pursuant to NYSE rules and procedure, this type of letter was called a "jurisdiction letter" because the sending of the letter with a description of the nature of the investigation was the method by which Enforcement asserted jurisdiction over a respondent.

**Enforcement's September 21, 2007 NASD Rule
8210 Letter**

18. On September 21, 2007 (the "September 21 Letter"), subsequent to the creation of FINRA, by first class mail to Waltsak at his residential address, as reflected in CRD, Enforcement renewed, pursuant to NASD Rule 8210, its requests for the information demanded in previous letters. Specifically, in the September 21 Letter, Enforcement requested that Waltsak submit the documents and information demanded in the April 27 Letter and provide a written explanation in response to the questions contained in the April 27 Jurisdiction Letter on or before October 10, 2007. The September 21 Letter again instructed Waltsak that failure to respond to these demands for information might result in the initiation of a formal disciplinary action against him.

19. The September 21 Letter was not returned to Enforcement.

20. To date, Waltsak has not provided the documents and information requested in the April 27 Letter and the September 21 Letter. Waltsak has also not provided the written explanation requested by the April 27 Jurisdiction Letter, the May 11 Letter and the September 21 Letter.

21. The acts, practices, and conduct by Respondent described above violate NASD Procedural Rule 8210 and NASD 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.

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:

7/23/08



David Camuzo

Senior Counsel

Thomas B. Lawson

Vice President and Chief Counsel

NASD Department of Enforcement- 18K

1801 K Street, NW

Washington D.C. 20006-1506

(202) 974-2810; Fax. No. (202) 974-2805

david.camuzo@finra.org.com