

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

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

JAMES MICHAEL PORRAZZO
(CRD No. 3032023),

Respondent.

Disciplinary Proceeding
No. 2007009436401

Hearing Officer – RSH

DEFAULT DECISION

April 19, 2010

Respondent violated Conduct Rules 3030 and 2110 by engaging in outside business activities without providing his firm written notice of his activities. For this violation, Respondent is suspended from associating with any member firm in any capacity for four months and fined \$10,000. He also violated Rule 2110 by using an unapproved outside e-mail account. For this violation, Respondent is suspended for 15 business days and fined \$5,000.

Appearances

Kevin E. Pogue, Senior Counsel, and Donald Sullivan, Senior Counsel, New York, New York, for the FINRA Department of Enforcement.

No appearance by or for James M. Porrazzo.¹

¹ Porrazzo was originally represented by counsel; however, his attorney withdrew seven months after filing the answer.

DECISION

I. Introduction

The FINRA Department of Enforcement filed a Complaint in this proceeding on February 6, 2009. In its Complaint, Enforcement charged that the Respondent, James M. Porrazzo, violated Conduct Rules 3030 and 2110 by engaging in outside business activities without notifying his firm, and Rule 2110 by using an unapproved outside e-mail account to communicate with a customer about the outside business.²

On April 20, 2009, Porrazzo filed his Answer and denied the allegations in the Complaint. Following an Initial Pre-Hearing Conference, a hearing was scheduled to begin on December 8, 2009. On November 2, 2009, Porrazzo's attorney withdrew his representation and requested a 60-day adjournment of the hearing so that Porrazzo could obtain new counsel. The Hearing Officer granted the motion and scheduled a pre-hearing conference for January 8, 2010.

On January 8, 2010, the Hearing Officer convened a pre-hearing telephone conference to reschedule the hearing. Although the Respondent had been given notice of the call, he failed to appear for it.³ On January 11, 2010, the Hearing Officer issued an Order to Show Cause directing Porrazzo to show cause why the Hearing Officer should not hold him in default.⁴ Porrazzo did not respond to the Order to Show Cause. Consequently, on February 17, 2010, Enforcement filed a Motion for Entry of Default

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. Under the new rules, the numbering of certain rules was changed. NASD Conduct Rule 2110 was changed to FINRA Conduct Rule 2010. The two rules are substantially identical.

³ Enforcement Exhibit ("CX")-9 (Transcript of January 8 pre-hearing conference call); CX-10.

⁴ CX-10.

Decision, supported by the Declaration of Kevin E. Pogue and 11 exhibits. Porrazzo did not reply to the motion.⁵

II. Jurisdiction and Origin of the Complaint

A. Jurisdiction

Porrazzo was registered as a General Securities Representative ("Series 7") through FINRA member firm UBS Financial Services, Inc. between September 13, 2002, and September 29, 2006.⁶ On or about October 27, 2006, UBS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), which reported that Porrazzo had been terminated on or about September 29, 2006, for violating UBS' policies governing outside business activities and financial relationships with clients.⁷ Porrazzo was registered as a Series 7 with another FINRA member firm from October 27, 2007, until he resigned on or about December 17, 2009. He has not been associated with a FINRA member firm since then.⁸

Although Porrazzo has not been associated with a FINRA member firm since December 17, 2009, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) the Complaint was filed while Porrazzo was still registered with a FINRA member firm; and (2) the Complaint

⁵ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

⁶ CX-1; Pogue Decl., ¶ 5.

⁷ CX-2; Pogue Decl., ¶ 6.

⁸ CX-1; Pogue Decl., ¶ 7.

charged him with misconduct that occurred while he was employed at a FINRA member firm.⁹

B. Origin of the Complaint

The investigation leading to the filing of the Complaint began when FINRA received the Form U5 filed by UBS, which reported that it had terminated Porrazzo for violating UBS' policies relating to outside business activities.¹⁰

III. Respondent's Default

Several months after the dates for a hearing had been set, Porrazzo requested a postponement to obtain new counsel. The Hearing Officer granted the request and set January 8, 2010, as the date for a pre-hearing conference to set new hearing dates. On January 8, the Hearing Officer convened the telephone conference. Although the Respondent had been given notice of the call, he failed to appear for it.¹¹ On January 11, 2010, the Hearing Officer issued an Order to Show Cause directing Porrazzo to show cause why the Hearing Officer should not hold him in default. The Order explicitly stated that if the Respondent "fails to file a response to the Order to Show Cause by the deadline [January 18, 2010], the Hearing Officer will deem the allegations against him... as admitted and will issue a default decision based on such admissions."¹² Porrazzo did not respond to the Order to Show Cause.

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

¹⁰ Pogue Decl., ¶ 8.

¹¹ Enforcement Exhibit ("CX")-9 (Transcript of January 8 pre-hearing conference call); CX-10.

¹² CX-10.

Accordingly, pursuant to Procedural Rules 9241(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.

IV. Violations

A. Unreported Outside Business Activities

The Complaint's First Cause of Action alleges that Porrazzo violated Rules 3030 and 2110 by failing to disclose to UBS that he was engaged in an outside business activity with a UBS client from approximately February 4, 2005, through calendar year 2005. On or about February 4, 2005, Porrazzo and RR, a UBS customer, entered into a limited partnership called "Mysweetthing Racing Stables ("Stables"). Both Porrazzo and RR were identified in the limited partnership agreement as "general partners." The purpose of Stables was to "purchase, sell, invest, breed, and care for livestock, specifically, racing horses." RR and Porrazzo each contributed \$100,000 to Stables, and agreed to split all profits. Porrazzo's 2005 federal tax return reported that he had sustained ordinary business losses of approximately \$22,451, with net losses of \$7,500, from his participation in Stables.

The Complaint further alleges that UBS' written policies and procedures state that no employee may engage in any outside business activity or investment without the prior consent of UBS. In completing UBS' annual compliance certification for 2005, Porrazzo stated that he did not engage in any outside business activities. Porrazzo never disclosed his involvement with Stables to UBS.

Enforcement states that it has in its files the transcript of Porrazzo's on-the-record testimony ("OTR") in which he admitted that he and a UBS client were partners in

Stables. Porrazzo testified that he failed to provide UBS with any notice of his involvement with Stables because he knew the firm would not approve of an outside business activity involving a client. Enforcement's files also contain federal tax documents showing that Stables sold five horses in calendar year 2005 for a net profit of approximately \$91,720, and documents showing that Stables horses won at least \$50,000 in prize money from races they participated in.¹³

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

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Porrazzo violated Conduct Rules 3030 and 2110 by failing to provide UBS with written notice of his outside business

¹³ Pogue Decl., ¶¶ 10-11.

¹⁴ *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Release No. 26063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No. 26178, 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).

activities.¹⁶ It is well-established that a violation of one NASD rule violates Conduct Rule 2110.¹⁷

B. Unapproved Use of an Outside E-mail Account

The Complaint's Second Cause of Action alleges that Porrazzo violated Conduct Rule 2110 by communicating with RR about Stables using Porrazzo's personal e-mail. UBS' written policies and procedures required it to monitor incoming and outgoing correspondence to determine whether any of its employees violated firm policies. Porrazzo's use of his personal e-mail to correspond with RR thwarted UBS' policies. Enforcement states that it has in its files copies of the e-mails exchanged between Porrazzo and RR, and Porrazzo's OTR in which he admitted using his personal e-mail from home to correspond with RR.¹⁸

Conduct Rule 2110 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." An associated person who violates firm policies and procedures violates Conduct Rule 2110.¹⁹ Using his personal e-mail account to correspond with RR allowed Porrazzo to shield his outside business activity from his firm.

The allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Porrazzo violated UBS' policies by using an unapproved e-mail account to communicate with a customer. Accordingly, the Hearing Officer finds that Porrazzo violated Conduct Rule 2110.

¹⁶ *Dep't. of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (N.A.C. Dec. 7, 2005).

¹⁷ *Dep't. of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, *12-13 (N.A.C. June 2, 2000).

¹⁸ Pogue Decl., ¶ 13.

¹⁹ *Dep't. of Enforcement v. Joseph A. Zaragoza*, 2008 FINRA Discip. LEXIS 28 at *27, n. 21 (N.A.C. Aug. 20, 2008), citing *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996).

V. Sanctions

A. Outside Business Activities

The FINRA Sanction Guidelines ("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. Where the outside business activities involve aggravating circumstances, the Guidelines recommend consideration of a suspension of up to one year.²⁰

Under the facts of this case, the relevant principal considerations in determining sanctions for engaging in outside business activities in violation of Conduct Rule 3030 include: (i) whether the outside activity involved customers of the firm, and (ii) whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm.

Porrizzo entered into a partnership with a UBS customer, and concealed the business from his firm by using personal e-mail to correspond with the customer and denying on his annual certification that he had been engaged in any outside business activity. On the other hand, the record contains no mitigating factors. Accordingly, the Hearing Officer concludes that Porrizzo should be suspended in all capacities for four months and fined \$10,000 for his violation of Conduct Rules 3030 and 2110.

B. Unapproved Use of an Outside E-mail Account

The Guidelines do not specifically address the unauthorized use of personal e-mail accounts; however, FINRA has previously applied the Guidelines pertaining to

²⁰ *FINRA Sanction Guidelines*, 14 (2007), www.finra.org/sanctionguidelines.

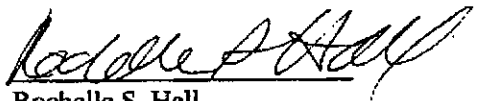
recordkeeping violations for failure to submit e-mail correspondence for review.²¹ Those Guidelines recommend a suspension of up to 30 business days and a fine of \$1,000 to \$10,000.²² In this case, Porrazzo's use of his personal e-mail account to communicate with RR warrants a serious sanction. Porrazzo purposely used his personal e-mail account so that his outside business activity with a firm client would not be detected by his firm. This also prevented the firm from carrying out its responsibility to review correspondence.

For violating Conduct Rule 2110, Porrazzo will be suspended for 15 business days and fined \$5,000.

VI. Order

Porrazzo is suspended for four months from associating with any member firm in any capacity, and fined \$10,000 for engaging in outside business activities, in violation of Conduct Rules 3030 and 2110. He is also suspended for 15 business days and fined \$5,000 for using a personal e-mail account to correspond with a customer, in violation of Conduct Rule 2110. The suspensions shall be imposed consecutively. If this Default Decision becomes the final disciplinary action of FINRA, Porrazzo's suspension shall begin on June 7, 2010, and end at the close of business on October 27, 2010. The fines shall be due and payable if and when he re-enters the securities industry.

SO ORDERED.


Rochelle S. Hall
Hearing Officer

²¹ See *Dep't. of Enforcement v. Zaragoza*, 2008 FINRA Discip. LEXIS 28, at *31 (N.A.C., Aug. 20, 2008).

²² *FINRA Sanction Guidelines* 30 (2007).

Copies to:

James M. Porrazzo (*via overnight courier and first class mail*)

Kevin E. Pogue, Esq. (*via electronic and first class mail*)

Donald Sullivan, Esq. (*via electronic and first class mail*)

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

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

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

JAMES MICHAEL PORRAZZO
Registered Representative
(CRD No. 3032023)

Respondent

**Disciplinary Proceeding
No. 20070094364**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Commencing on or about February 4, 2005, James Michael Porrazzo ("Porrazzo") engaged in an unapproved outside horse racing business with a customer of his member organization employer. Moreover, Porrazzo failed to reveal his participation in the horse racing venture on his employer's questionnaires requesting the disclosure of, among other things, any outside business activities. Accordingly, Porrazzo violated NASD Rules 3030 and 2110.
2. Additionally, Porrazzo used his personal e-mail address to communicate with the customer about the outside business activity. As a result, Porrazzo's e-mail correspondence with the customer evaded detection by his member organization employer. Porrazzo, therefore, violated NASD Rule 2110 by engaging in e-mail correspondence with a customer that was not reviewed and approved by his member organization employer.

RESPONDENT AND JURISDICTION

3. Porrazzo entered the securities industry in February 1998 as a registered representative with FINRA. From September 2002 to September 2006, Porrazzo was employed in that capacity by UBS Financial Services, Inc. ("UBS" or the "Firm"), a FINRA member firm. UBS terminated Porrazzo's employment on or about September 29, 2006. From October 2007 to present, Porrazzo has been employed as a registered representative and securities principal by a FINRA member organization and remains subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION NASD RULES 3030 AND 2110 (UNAPPROVED OUTSIDE BUSINESS ACTIVITY)

4. The Department re-alleges and incorporates by reference Paragraphs 1 - 3 above.
5. On or about February 4, 2005, Porrazzo and RR, a UBS customer, entered into a limited partnership agreement involving a horse racing venture.
6. According to the agreement, Porrazzo and RR's limited partnership was called "Mysweetthing Racing Stables" ("Stables") and its principal office was Porrazzo's home address. The limited partnership agreement stated that the partnership was organized to "purchase, sell, invest, breed and care for livestock, specifically 'racing horses' [sic]." Both Porrazzo and RR were identified in the limited partnership agreement as "general partners", who had "the exclusive right to manage and control the affairs of the [p]artnership."
7. The limited partnership agreement also states that Porrazzo and RR would equally share all net income, but that RR would be responsible for 100 percent of the partnership losses. Porrazzo and RR contributed approximately \$100,000 each to the Stables partnership.
8. A tax identification number was procured for the Stables limited partnership. Federal tax

returns for 2005, filed on behalf of the Stables, report that Stables sustained \$44,902 in losses. Moreover, the annexed schedules indicate that in 2005, Stables had purchased and sold five racehorses resulting in a profit of approximately \$91,720. The Stables tax return also identified Porrazzo as the tax matters partner for purposes of the return.

9. Porrazzo's 2005 federal tax return Schedule K-1 tax filing for Stables, reported that Porrazzo sustained approximately \$22,451 ordinary business loss, with a net loss of \$7,500.
10. Porrazzo's association with the Stables limited partnership was outside the scope of his employment with UBS.
11. Approximately one year prior to the formation of the Stables limited partnership, Porrazzo provided UBS with a written request seeking permission to participate in an unrelated horse racing partnership, which the Firm approved.
12. However, in connection with the Stables limited partnership, Porrazzo never made a written request nor received the written consent of UBS to form and participate in this outside business activity.
13. UBS written policies and procedures states that no employee may engage in any outside business activity/investment without the prior consent of his employer.
14. Porrazzo did not provide prompt written notice to UBS of his business activities with the Stables limited partnership.
15. On or about January 26, 2006, Porrazzo was asked by the Firm to complete a "FA Surprise Exam Questionnaire Summary." Among other things, the form asked Porrazzo to discuss any "employment outside of UBS..." and whether he "receive[d] any compensation from a source other than" UBS. Porrazzo did not reveal his activities in connection to the Stables limited partnership.

16. On or about February 21, 2006, Porrazzo completed the Firm's Annual Certification of Compliance for the year 2005. Among other things, the form contained questions asking if Porrazzo agreed with a series of declarations, stating that he did not engage in any outside business activity. Porrazzo indicated that he agreed with the statements that he did not engage in any outside business activities and did not reveal his participation in the Stables limited partnership.
17. By reason of the foregoing, the acts, practices and conduct set forth above constitute violations of NASD Conduct Rules 3030 and 2110 by Porrazzo.

**SECOND CAUSE OF ACTION
NASD RULE 2110
(Sending of Unapproved E-Mail Correspondence)**

18. The Department re-alleges and incorporates by reference Paragraphs 1 - 17 above.
19. In or about 2006 and without the knowledge of UBS, Porrazzo exchanged several e-mail communications with RR concerning the Stables limited partnership from Porrazzo's personal e-mail address.
20. The e-mail correspondence in question primarily concerned expenses associated with the horse racing business of the Stables limited partnership.
21. UBS written policies and procedures require the monitoring of incoming and outgoing correspondence to determine if any of its employees violated Firm policies. Porrazzo's actions thwarted these policies.
22. By reason of the foregoing, the acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Porrazzo.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

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

FINRA DEPARTMENT OF ENFORCEMENT

2/5/09
Date

Susan Light

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