

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEVEN CRAIG KEIFNER
(CRD No. 2103759),

Respondent.

Disciplinary Proceeding
No. 2007009444701

Hearing Officer – MC

DEFAULT DECISION

September 11, 2009

Respondent Steven Craig Keifner (“Keifner”) is barred from associating with any FINRA member firm in any capacity for: (i) engaging in unauthorized trading, in violation of Conduct Rule 2110 and IM-2310-2; (ii) engaging in unsuitable options trading, in violation of Conduct Rules 2110 and 2860(b)(19); and (iii) causing inaccurate entries to be made in his member firm’s books and records, in violation of Conduct Rules 3110 and 2110. A bar is also imposed for Keifner’s violations of Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to two requests for information and failing to provide testimony as requested by FINRA staff pursuant to Procedural Rule 8210.

Appearances

Julie Han Broderick, Director, and Jeremy Bloom, Senior Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent Steven Craig Keifner.

DECISION

I. Introduction

On April 15, 2009, the Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed the attached Complaint in this disciplinary proceeding. The Complaint contains four Causes of Action. The First Cause

of Action alleges that Keifner violated Conduct Rule 2110¹ and IM-2310-2 when he engaged in unauthorized options trading in a customer's account. The Second Cause of Action alleges that Keifner violated Conduct Rules 2110 and 2860(b)(19) when he made unsuitable recommendations to the customer. The Third Cause of Action alleges that Keifner violated Conduct Rules 2110 and 3110, and Securities Exchange Act Rules 17a-3 and 17a-4, when he caused inaccurate and misleading information to be recorded in the books and records of his member firm employer. Finally, the Fourth Cause of Action alleges that Keifner violated Conduct Rule 2110 and Procedural Rule 8210 when he failed to respond to two requests for information and failed to appear and provide testimony pursuant to FINRA staff requests issued to him pursuant to Procedural Rule 8210.

Enforcement served Keifner with the Complaint and Notice of Complaint by certified and first-class mail at his residential address as it appears in the Central Registry Depository ("CRD address"). Keifner did not file an Answer to the Complaint. Consequently, Enforcement served Keifner with the Complaint and Second Notice of Complaint, also at his CRD address. Again, Keifner failed to file an Answer or otherwise respond to the Complaint. Accordingly, on July 13, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion") supported by

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 Default 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.

the Amended Declaration of Julie Han Broderick, filed July 14, 2009, and three exhibits.²

Keifner has not responded to the Default Motion.

For the reasons set forth below, the Default Motion is granted.³

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Keifner was first registered with FINRA in 1990.⁴ From September 2000 until March 27, 2007, when his employment was terminated, Keifner was registered with A.G. Edwards & Sons, Inc. (the "Firm").⁵ Subsequently, Keifner was employed with another FINRA member firm from May 3, 2007, until he was discharged on November 19, 2007; he is not currently associated with a FINRA member firm.⁶

Keifner committed the violations alleged in the first three Causes of Action of the Complaint while he was employed by the Firm. Keifner committed the violations alleged in the Fourth Cause of Action of the Complaint less than two years after his employment with the Firm was terminated. Consequently, and because the Complaint was filed within two years of his last registration with a member firm, FINRA retains jurisdiction over Keifner.⁷

² Enforcement's exhibits will be referred to as "CX-_" with the appropriate exhibit and page numbers. References in this Decision to the Amended Declaration will be referred to as "Decl." or "Broderick Declaration" with citation to specific paragraphs.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Broderick Declaration, and the exhibits filed by Enforcement.

⁴ Decl. ¶ 2; CX-1.

⁵ *Id.*

⁶ *Id.*

⁷ See Article V, Sec. 4, FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

B. Keifner's Default

Enforcement served Keifner with the Complaint and Notice of Complaint by certified and first-class mail at his CRD address on April 14, 2009.⁸ The receipt for the certified mailing was returned to Enforcement date-stamped April 20, 2009,⁹ and signed by a person identified by Keifner to FINRA staff as his neighbor.¹⁰ The first-class mailing was not returned. Enforcement sent the Complaint and Second Notice of Complaint to Keifner's CRD address on May 18, 2009, also by certified and first-class mail.¹¹ The certified mailing receipt, stamped May 27, 2009, was signed by Keifner.¹² Keifner has not filed an Answer to the Complaint.¹³

Enforcement complied with the requirements of Procedural Rule 9134 by mailing the Complaint and Notices of Complaint to Respondent's CRD address. In addition, Keifner had actual notice of the Complaint, as evidenced by the fact that he signed the receipt acknowledging that he received the Complaint and Second Notice of Complaint on May 27, 2009.

⁸ Decl. ¶ 6.

⁹ CX-2.

¹⁰ Decl. ¶ 6.

¹¹ Decl. ¶ 7.

¹² *Id.*; CX-3.

¹³ Decl. ¶ 8.

Keifner defaulted by failing to file an Answer to the Complaint.¹⁴ Accordingly, the allegations in the Complaint are deemed admitted, pursuant to Procedural Rules 9215(f) and 9269(a)(2).

C. Violations

1. Keifner Engaged in Unauthorized Trading

The First Cause of Action of the Complaint alleges that Keifner, from February to May 2006, engaged in unauthorized options trading in the account of his customer, RAS, in violation of Conduct Rule 2110 and IM-2310-2. During that period, Keifner effected approximately 83 options transactions in RAS's account.¹⁵ RAS, who had no experience trading in options, did not authorize any of these transactions and never provided Keifner with written or oral authority to trade in his account.¹⁶ Thus, Keifner violated Conduct Rule 2110 and IM-2310-2.

2. Keifner Made Unsuitable Recommendations

The Second Cause of Action of the Complaint alleges that Keifner's unauthorized options trading in RAS's account constituted unsuitable recommendations to RAS to engage in options trading, in violation of Conduct Rules 2110 and 2860(b)(19).

During the period relevant to this disciplinary proceeding, RAS was a 68 year-old retired construction company superintendent with a ninth-grade education.¹⁷ RAS and his wife depended upon income from a pension, paying them \$2,300 per month, and

¹⁴ *Dep't of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (NAC 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)).

¹⁵ Decl. ¶ 11(a).

¹⁶ Decl. ¶ 11(b).

¹⁷ Decl. ¶ 13(f).

social security, totaling \$2,016 per month.¹⁸ RAS's other assets were an Individual Retirement Account and personal account at the Firm, and \$44,000 in a checking and savings account.¹⁹ RAS's investment objective was growth with low risk.²⁰

Keifner became broker of record for RAS's personal account at the Firm in February 2006.²¹ RAS's account was non-discretionary, and RAS did not provide Keifner with the authority to make discretionary trades in the account.²² When Keifner became RAS's broker, approximately 92% of RAS's account was invested in income-producing equities and 8% in money market funds.²³ In March 2006, at Keifner's request, RAS executed an options agreement for the account.²⁴ From March through May 2006, Keifner's options trading transformed RAS's account, so that by May 2006, 58% of the account was invested in options, 38% in equities, and 4% in money market funds; in addition, the account value dropped from \$146,557 to \$122,245, a loss of \$24,332.²⁵

Given RAS's age, investment objectives, financial status, and needs, when Keifner engaged in options trading in RAS's account, he did not have reasonable grounds to believe that options trades were suitable for RAS or that RAS was financially able to bear the risks inherent in the options contracts Keifner purchased. Furthermore, Keifner

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complaint, ¶ 6.

²² *Id.*; Decl. ¶ 11(b).

²³ Complaint, ¶ 6; Decl. ¶ 13(a).

²⁴ Complaint, ¶ 7.

²⁵ Decl. ¶¶ 13(a)-13(d).

lacked reasonable grounds to believe that RAS had sufficient investment knowledge and experience to evaluate appropriately the risks of the transactions.²⁶

Rule 2310(a) requires that “[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.”²⁷ Thus, “a representative may make only such recommendations ... that would be consistent with the customer’s financial situation and needs.”²⁸ Moreover, NASD Conduct Rule 2310 encompasses a “fundamental responsibility for fair dealing” that a registered representative has to his or her customers.²⁹ A violation of Conduct Rule 2310 is also a violation of Rule 2110, in contravention of “just and equitable principles of trade.”

By executing unauthorized options trading transactions in RAS’s account, Keifner made recommendations that were unsuitable for RAS, as alleged in the Second Cause of Action of the Complaint, in violation of Conduct Rules 2110 and 2860(b)(19).³⁰

²⁶ Decl. ¶ 13(e).

²⁷ See also *District Bus. Conduct Comm. v. Kunz*, No. C3A960029, 1999 NASD Discip. LEXIS 20, at *62 (NAC July 7, 1999) (“Conduct Rule 2310 provides that a representative may make only such recommendations as would be consistent with a customer’s financial situation and needs.”), *aff’d*, *Kevin D. Kunz*, Exch. Act Rel. No. 45,290, 2002 SEC LEXIS 104 (Jan. 16, 2002).

²⁸ *Dep’t of Enforcement v. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *10 (NAC Dec. 3, 2001), *aff’d*, Exch. Act Rel. No. 47,335 (Feb. 10, 2003).

²⁹ *Larry Ira Klein*, Exch. Act Rel. No. 37,835, 1996 SEC LEXIS 2922, at **16-17 (Oct. 17, 1996) (citing *John M. Reynolds*, Exch. Act Rel. No. 30,036, 1991 SEC LEXIS 2725, at *10, n.13 (Dec. 4, 1991)).

³⁰ A registered representative who exercises control over an account is deemed to have implicitly recommended the transactions that he executes in the account. *Clyde J. Bruff*, Exch. Act Rel. No. 40,583, 1998 SEC LEXIS 2266 (Oct. 21, 1998).

3. Keifner Made Inaccurate Entries in the Firm's Books and Records

The Third Cause of Action of the Complaint alleges that Keifner entered inaccurate information in the Firm's books and records, in violation of Conduct Rules 2110 and 3110, and Securities Exchange Act Rules 17a-3 and 17a-4. On March 2, 2006, Keifner falsified RAS's new account documentation to make it appear that RAS's net worth was \$400,000, his investment objectives were conservative appreciation and aggressive income, and that he had 11 years of investment experience in mutual funds and stocks and bonds, and six years of experience in certificates of deposit.³¹ RAS did not provide Keifner with this information, and it was untrue.³² By altering RAS's new account documentation, and thereby entering false information into the Firm's books and records, Keifner violated Conduct Rules 2110 and 3110, and Securities Exchange Act Rules 17a-3 and 17a-4.

4. Keifner Failed to Respond to Requests for Information and Failed to Testify

The Fourth Cause of Action of the Complaint alleges that Keifner failed to provide responses to two requests for information and failed to appear for testimony, in violation of Conduct Rule 2110 and Procedural Rule 8210. On July 7, 2008, FINRA staff sent a letter by certified and first-class mail to Keifner's CRD address requesting information under the authority of Procedural Rule 8210.³³ A signed receipt returned to FINRA staff indicated that Keifner received the letter on July 19, 2008.³⁴ Keifner failed

³¹ Decl. ¶ 15(a).

³² Decl. ¶ 15(c).

³³ Decl. ¶ 17(a).

³⁴ *Id.*

to provide the requested information.³⁵ On August 11, 2008, FINRA staff sent another letter pursuant to Procedural Rule 8210, again by certified and first-class mail, to Keifner's CRD address, requesting that Keifner provide information.³⁶ On August 16, 2008, the receipt for the certified mailing was signed by a Bonita Bosworth, whom Keifner identified to FINRA staff as his girlfriend; the first-class mailing was not returned.³⁷ Keifner did not provide the information requested.³⁸

On September 5, 2008, Enforcement sent a letter by certified and first-class mail to Keifner's CRD address requesting that he appear and provide testimony, pursuant to Procedural Rule 8210, at a specified location, date and time.³⁹ The receipt for the certified mailing, signed by Keifner, was returned to Enforcement; the first-class mailing was not returned.⁴⁰ Keifner failed to appear to testify.⁴¹

By failing to provide the information requested and by failing to appear to testify, as requested by FINRA staff under the authority of Procedural Rule 8210, Keifner violated Conduct Rule 2110 and Procedural Rule 8210.

III. Sanctions

For the violations alleged in the First, Second, and Third Causes of Action of the Complaint, Enforcement recommends barring Keifner from association with any FINRA member firm in all capacities. In support of this recommendation, Enforcement states

³⁵ Decl. ¶ 17(b).

³⁶ Decl. ¶ 17(c).

³⁷ *Id.*

³⁸ Decl. ¶ 17(d).

³⁹ Decl. ¶ 17(e).

⁴⁰ *Id.*

⁴¹ *Id.*

simply that Keifner's conduct was egregious. For the violations alleged in the Fourth Cause of Action of the Complaint, Enforcement, noting the absence of mitigating circumstances, recommends imposition of an additional bar upon Keifner.⁴²

A. Unauthorized Transactions

For engaging in unauthorized transactions in violation of Conduct Rule 2110 and IM-2310-2, FINRA's Sanction Guidelines recommend a fine from \$5,000 to \$75,000, and a suspension of ten business days to a year. For egregious cases, the Guidelines suggest consideration of a suspension of up to two years or a bar.⁴³

The two Principal Considerations listed 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) quantitatively egregious trading, consisting of 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).⁴⁴

In this case, Keifner's 83 unauthorized options transactions in RAS's account over approximately four months constitute quantitatively egregious conduct. Keifner's alteration of RAS's new account documentation and his failure to provide information

⁴² Because the Firm paid restitution to RAS for Keifner's unsuitable and unauthorized options trades, a restitution order is not necessary.

⁴³ *FINRA Sanction Guidelines*, p. 103 (2007).

⁴⁴ *Id.*, at n.2.

about the matter requested by FINRA staff are aggravating factors that reflect his efforts to conceal his unauthorized trading and to evade FINRA's regulatory investigation. Keifner's unauthorized trading caused RAS significant loss, ultimately borne by the Firm when it paid restitution to RAS. Finally, the evidence supports the conclusion that Keifner acted in bad faith. There is no evidence that Keifner had a reasonable basis for believing RAS authorized the options transactions. Thus, the pattern of Keifner's misconduct constituted qualitatively, as well as quantitatively, egregious unauthorized trading.

The SEC has recently emphasized the seriousness of engaging in unauthorized trading in a customer's account:

An associated person is "responsible for obtaining his customer's consent prior to purchasing a security for the customer's account." As we have held, "[u]nauthorized trades are a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade." Such misconduct goes "to the heart of the trustworthiness of a securities professional," and "is a fundamental betrayal of the duty owed by a sales[person] to his customers."⁴⁵

B. Unsuitable Recommendations

For making unsuitable recommendations in violation of Conduct Rules 2110 and 2860(b)(19), the Guidelines recommend a fine of \$2,500 to \$75,000, a suspension in any or all capacities for a period from 10 business days to one year or, in egregious cases, suspension of up to two years or a bar.⁴⁶

⁴⁵ *Wanda P. Sears*, Exch. Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2009), *citations omitted*.

⁴⁶ *Sanction Guidelines*, *supra* at 99.

In this case, Keifner's unauthorized options transactions constituted recommendations that were unsuitable for RAS, considering the customer's investment objectives, age, financial situation and needs, and were made without a reasonable belief that RAS was able to bear the risks or that he was capable of evaluating them. These facts, taken together with the fact that Keifner executed 83 options transactions over a four-month period, render his unsuitable recommendations egregious.

C. Inaccurate Entries in the Firm's Books and Records

For violations of Conduct Rules 2110 and 3110, the Sanction Guidelines recommend a fine of \$1,000 to \$10,000, a suspension in any or all capacities for up to 30 business days, and in egregious cases, a fine of \$10,000 to \$100,000, and a suspension for up to two years, or a bar.⁴⁷

Here, Keifner altered RAS's new account documentation, entering false information that was not provided by RAS and that inaccurately described RAS's net worth, investment objectives and investing experience. The alterations made it appear as if Keifner's unauthorized and unsuitable options trades were appropriate, and seemed designed to avoid supervisory scrutiny of the trading activity in the account. These factors render Keifner's alterations to the Firm's books and records egregious.

Considering the egregious nature of Keifner's misconduct, and considering also that sanctions should be remedial and fashioned so as to deter future misconduct by a respondent and others in the securities industry generally, Enforcement's recommendation of a bar is appropriate for Keifner's violations described in the First, Second and Third Causes of Action of the Complaint.

⁴⁷ *Id.*, at 30.

D. Failure to Provide Information and Failure to Appear for Testimony

The Guidelines recommend a bar when a respondent fails to respond to a request for information issued pursuant to Procedural Rule 8210.⁴⁸ If there are mitigating factors, the Sanction Guidelines recommend consideration of a suspension in any or all capacities for up to two years, and a fine of \$25,000 to \$50,000.

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 information.”⁴⁹ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”⁵⁰

Considering all the circumstances surrounding Keifner’s violations of Conduct Rule 2110 and Procedural Rule 8210, as described in the Fourth Cause of Action of the Complaint, Enforcement’s recommendation for imposition of a bar is appropriate to meet the remedial goals of serving to deter Keifner and others from engaging in the types of misconduct described above.

IV. Order

Respondent Steven Craig Keifner is barred from associating in any capacity with any FINRA member firm for: (i) engaging in unauthorized trading in the account of a

⁴⁸ *Id.* at 35.

⁴⁹ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (NAC Dec. 18, 2006).

⁵⁰ *Id.* at *41.

customer, in violation of Conduct Rule 2110 and IM-2310-2; (ii) engaging in unsuitable options trading in a customer's account, in violation of Conduct Rules 2110 and 2860(b)(19); and (iii) entering inaccurate information on the books and records of the Firm, in violation of Conduct Rules 2110 and 3110. Keifner is also barred for violating Conduct Rule 2110 and Procedural Rule 8210 for failing to provide information in response to two requests issued by FINRA staff pursuant to Procedural Rule 8210, and for failing to appear to provide testimony as requested by FINRA staff pursuant to Procedural Rule 8210.

The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

Copies to:

Steven C. Keifner (via FedEx and first-class mail)
Julie Han Broderick, Esq. (via electronic and first-class mail)
Jeremy Bloom, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

Financial Industry Regulatory Authority (FINRA)

Office of Hearing Officers

Department of Enforcement,

Complainant,

v.

Steven Craig Keifner
(CRD No. 2103759)

Respondent.

DISCIPLINARY PROCEEDING
No. 2007009444701

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between February through May 2006, Steven Craig Keifner ("Keifner"), a registered representative with A.G. Edwards & Sons, Inc. (the "Firm"), serviced the personal account of RAS, then a 68 year-old retired construction supervisor who had no prior options investment experience. Keifner executed approximately 83 unauthorized options transactions in RAS's non-discretionary account during March through May 2006 (the "relevant period"). These transactions also were unsuitable given RAS's conservative investment objectives, financial needs and inability to evaluate and assume the financial risks involved in the trading. By virtue of these actions, Keifner violated NASD Rules 2860(b)(19)(A), 2860(b)(19)(B), IM-2310-2, and 2110.

2. Keifner was responsible for the accuracy of the information that was reflected on RAS's new account documentation. However, the document failed to accurately record RAS's investment objectives, prior investment experience and financial information. As a result, Keifner caused the Firm's books and records to contain false and misleading information in violation of NASD Rules 3110 and 2110 and Securities Exchange Act Rules 17a-3 and 17a-4.

3. During the course of its investigation, Enforcement issued several requests to Keifner, pursuant to NASD Rule 8210, that requesting that he provide information and also appear for an on-the-record interview ("OTR"). Although Keifner initially provided some of the information requested, he failed to provide other information and also failed to appear for testimony. As a result, Keifner violated NASD Rules 8210 and 2110.

RESPONDENT

4. Keifner (CRD No. 2103759) first became associated with a FINRA member firm in 1990. Between September 2000 until his registration was terminated on or about March 27, 2007, Keifner was registered as a Series 6,7 and 63 with the Firm. Following his termination from the Firm, Keifner was registered with another member firm from May 3, 2007 until his registration was terminated on November 19, 2007. Keifner has not been associated with a member firm since November 19, 2007. However, FINRA retains jurisdiction over Keifner pursuant to Article V, Section 4 (a) of the By-Laws, since the conduct which serves as the basis for this action commenced prior to his termination of registration from a member firm and this complaint has been filed within two years after the effective date of his last termination of registration from a member firm.

FACTS COMMON TO ALL COUNTS

5. In February 2006, after another registered representative left the Firm, Keifner became the broker of record for RAS, a 68 year-old retired construction company superintendent, who had a ninth-grade education. RAS and his wife existed on a pension and combined social security of \$2,300 and \$2,016, respectively, per month. In addition to his IRA and personal account at the Firm, RAS' only other assets were approximately \$44,000 in a checking and savings account. RAS's investment objective was growth with low risk.

6. When Keifner became broker of record for RAS's personal account in February 2006, the account's value was approximately \$146,476. At that time, 91% of the account was invested in the following equities: Apple Computer Inc., Caterpillar Inc., Chevron Corporation, Citigroup Inc., ConcoPhillips Co., Fedex Corporation, Goldman Sach's Group Inc., Lowes Companies Inc., Pacific Cap Bancorp, Pepsico Incorporated, Proctor & Gamble Company, Qualcomm Inc., and Intuitive Surgical Inc. RAS's account was a non-discretionary account and at no time did he provide Keifner with the authority to make discretionary trades in his account.

7. Although RAS had invested previously in equities, he had no experience in options trading. At Keifner's request, RAS executed an option agreement for his personal account during March 2006. Subsequently, RAS's personal account was approved for buying puts and calls.

8. After RAS executed the options agreement, Keifner sold some of RAS's holdings and used the proceeds to effect 32 put and call option transactions (24 purchases and 8 sales) during March 2006. At month end, the options positions accounted for approximately 30% of the account's value while the equities and money market funds represented approximately 58% and 12% of its value, respectively.

9. During April 2006, Keifner effected 28 put and call option transactions (14 purchases and 14 sales). At month-end, RAS's account consisted of approximately 55% options, 32% equities and 13% money market funds.

10. During May 2006, Keifner effected 23 put and call option transactions (17 purchases and 6 sales). By the end of May 2006, RAS's account consisted of approximately 58% options, 38% equities and 4% money market funds.

11. Between March through the end of May 2006, Keifner executed 83 call option transactions in RAS's account without first obtaining RAS's authorization to make each transaction. During that time, RAS's account's total value decreased from \$146,577 to \$122,245, a loss of \$24,332.

FIRST CAUSE OF ACTION
Unauthorized Trading
(Violations of IM 2310-2 and NASD Rule 2110)

12. Enforcement realleges and incorporates by reference paragraphs 1 through 11 above.

13. RAS never gave Keifner written or verbal discretionary authority to trade in his account. Therefore, Keifner was required to contact and obtain RAS's authorization to effect each transaction prior to order entry. During the relevant period, Keifner effected approximately 83 options transactions in RAS's account. RAS never authorized any of these transactions prior to order entry by Keifner.

14. By virtue of the foregoing, Keifner violated IM 2310-2 and NASD Rule 2110.

SECOND CAUSE OF ACTION

Unsuitable Options Trading

(Violations of NASD Rules 2860(b)19 (A), 2860(b)19 (B) and 2110)

15. Enforcement realleges and incorporates by reference paragraphs 1 through 14 above.

16. At the time that Keifner recommended that RAS buy and sell the options transactions, he did not have reasonable grounds to believe that the recommendations were suitable for RAS based upon RAS's investment objectives, financial situation and needs, and other information known to Keifner.

17. In addition, at the time that Keifner recommended that RAS buy and sell the options transactions, he did not have a reasonable belief that RAS had such knowledge and experience in financial matters that he could reasonably be expected to be capable of evaluating the risks of the recommended transactions, and was financially able to bear the risks of the recommended positions in the options contracts.

18. By virtue of the foregoing, Keifner violated NASD Rules 2860(b)19(A), 2860(b)(19)(B) and 2110.

THIRD CAUSE OF ACTION

Inaccurate Books and Records

**(Violations of NASD Rules 3110 and 2110 and
Securities Exchange Act Rules 17a-3 and 17a-4)**

19. Enforcement realleges and incorporates by reference paragraphs 1 through 18 above.

20. Keifner was responsible for the accuracy of the information reflected on RAS's new account document for his personal account. On March 2, 2006, Keifner updated RAS's new account document by indicating that RAS's net worth was \$400,000; his investment objectives (in order of priority) were conservative appreciation and ag-

gressive income; he had 11 years investment experience in stocks and bonds, six years in certificates of deposit, and 11 years in mutual funds. RAS never gave Keifner this information and it was false and inaccurate.

21. By virtue of the foregoing, Keifner violated NASD Rules 3110 and 2110 and Securities Exchange Act Rules 17a-3 and 17a-4.

FOURTH CAUSE OF ACTION
Failure to Cooperate
(Violations of NASD Rules 8210 and 2110)

22. On July 7, 2008, during the course of its investigation, Enforcement sent Keifner a letter, pursuant to NASD Rule 8210, requesting that he provide information. The letter was sent by certified and first class mail to Keifner's CRD address. The return receipt for the certified letter was signed by Keifner. The letter sent via first class mail was not returned to Enforcement.

23. Keifner failed to respond to the requests in the July 7, 2008 letter.

24. On August 11, 2008, Enforcement sent Keifner a second letter, pursuant to NASD Rule 8210, requesting that he provide information. The letter was sent by certified and first class mail to Keifner's CRD address. The return receipt for the certified letter was signed by Bonita Bosworth, whom Keifner identified as his girlfriend. The letter sent via first class mail was not returned to Enforcement.

25. Keifner failed to respond to the requests in the August 11, 2008 letter.

26. On September 5, 2008, Enforcement sent Keifner a letter at his CRD address, pursuant to NASD Rule 8210, requesting that Keifner appear and provide testimony at 14 Wall Street, in New York City on September 30, 2008. The return receipt for

this certified letter was signed by Keifner. The letter sent via first class mail was not returned to Enforcement.

27. Keifner failed to appear and provide testimony as required.

28. By virtue of the above, Keifner violated NASD Rules 8210 and 2110 by failing to provide the information requested by Enforcement and by failing to appear and testify at his scheduled OTR.

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.
- 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: 4/14/09


Jeremy Bloom
Senior Counsel
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
Phone: (646) 315-7310
Fax: (202) 689-3426

Julie H. Broderick
Director
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
Phone: (646) 315-7313
Fax: (202) 689-3414