

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN JOSEPH MAZZELLA
(CRD No. 4893599),

Respondent.

Disciplinary Proceeding
No. 2007010339901

DEFAULT DECISION

Hearing Officer – SNB

April 21, 2009

Respondent is barred from associating with any FINRA member in any capacity for submitting false insurance applications and engaging in an unauthorized insurance transaction, in violation of Rule 2110, and failing to appear for testimony, in violation of Rules 8210 and 2110.

Appearances

Noel C. Downey, Esq., Woodbridge, NJ, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On November 3, 2008, the Department of Enforcement (“Enforcement”) filed a three-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that John Joseph Mazzella (“Respondent”) violated Rule 2110 by submitting false insurance applications. The second cause alleges that Respondent violated Rule 2110 by engaging in an unauthorized insurance transaction. The third cause alleges that Respondent violated Rules 8210 and 2110 by failing to appear for testimony as requested by FINRA Staff.

Respondent did not file an Answer to the Complaint. Accordingly, on February 3, 2009, Enforcement filed a motion for entry of default decision, supported by the Declaration of Noel C. Downey and three exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On November 3, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent by first class and certified mail, sent to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address"). Respondent did not file an Answer. In the same manner, on December 2, 2008, Enforcement served the Complaint and Second Notice of Complaint. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

From January 4, 2005, through July 26, 2007, Respondent was registered with Pruco Securities, LLC ("Pruco") as an investment company and variable contracts products representative. During that time, he was also employed at The Prudential Insurance Company of America ("Prudential"). From September 20, 2007, through December 21, 2007, Respondent was registered in the same capacity with another

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

member firm. On January 16, 2008, that firm filed a Form U5 on Respondent's behalf noting his full termination date of December 21, 2007. Respondent has not been associated with a member firm since that time.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint charges Respondent with misconduct while he was a registered person and with failing to comply with requests for information made during the two-year period following termination of his last registration, and the Complaint was filed within two years of the termination of his registration.

IV. Violations

A. False Insurance Applications

The first cause of the Complaint alleges that on May 18, 2007, Respondent submitted false preliminary insurance applications for three fictitious customers, MT, LT, and JM. The value of each policy was \$500,000. As part of his submissions, Respondent falsely indicated to Prudential that he had received initial premiums of \$125.55, \$126.45, and \$163.15 for these policies, entitling him to receive "express" commissions for each of the policies of \$749.52, \$853.20, and \$597.20, respectively, which Prudential deposited into Respondent's account.²

These allegations are sufficient to establish, for purposes of this default decision, that Respondent submitted false insurance applications and misrepresented to his firm the payment of initial policy premiums on these applications, in violation of Rule 2110.

² Respondent never submitted completed applications or initial payments for these policies, so Prudential withdrew the express commission payments from his account.

B. Unauthorized Insurance Transaction

The second cause of the Complaint alleges that on April 6, 2007, Respondent engaged in the same conduct alleged in the first cause of the Complaint, but this time, the policy was in the name of an actual customer. Specifically, Respondent submitted a false preliminary insurance application for customer DL for a \$3 million policy. As part of his submission, Respondent falsely indicated to Prudential that he had received the initial premium payment of \$253.35, entitling him to receive an “express” commission of \$1,179.36, which Prudential deposited into Respondent’s account.³

These allegations are sufficient to establish, for purposes of this default decision, that Respondent submitted a false insurance application, and misrepresented to his firm that the customer paid the initial policy premium, in violation of Rule 2110.

C. Failure to Appear

The third cause of the Complaint alleges that, on November 27, 2007, FINRA Staff (“Staff”) sent Respondent a request, pursuant to Rule 8210, for On-the-Record testimony (“OTR”) on January 3, 2008. That request was sent by first-class mail to Respondent’s CRD address. On November 30, 2007, Respondent informed Staff that he received the request and said that he would attend the OTR as scheduled on January 3, 2008. However, he did not appear.

Accordingly, on January 9, 2008, Staff sent a second request, pursuant to Rule 8210, for Respondent to appear for an OTR on January 22, 2008. The request was sent

³ Respondent never submitted a completed application or initial payment for this policy, so Prudential withdrew the express commission payments from his account.

by first-class and certified mail to Respondent's CRD address. However, he did not appear.

These allegations are sufficient to establish, for purposes of this default decision, that Respondent failed to appear for testimony, in violation of Rules 8210 and 2110.

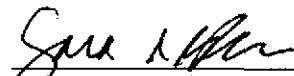
V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines ("Guidelines") at 35 (2007 ed.). For falsification of documents and unauthorized transactions, the Guidelines recommend a bar in egregious cases such as this, where Respondent submitted false insurance applications and misrepresented to his firm that policy premiums on these applications were paid. Id. at 39, 103. There is no evidence of any mitigating circumstances that would justify a lesser sanction for any of the three charges.⁴ Therefore, Respondent is barred from associating with any FINRA member in any capacity for each violation.

VI. Conclusion

For submitting false insurance applications and engaging in an unauthorized insurance transaction, in violation of Rule 2110, and failing to appear for testimony, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

⁴ Enforcement requested a bar for counts one and three, and a 15 to 30 business day suspension and \$5,000 fine, for count two, on the basis that it only involved one unauthorized insurance transaction. However, because the Hearing Officer viewed Respondent's unauthorized insurance transaction as factually related to his misconduct in count one, and also involved falsification of documents and misrepresentations to his firm, she determined that a bar was appropriate for that violation as well.

Copies to: John J. Mazzella (*via overnight courier and first-class mail*)
Noel C. Downey, Esq. (*via electronic & first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

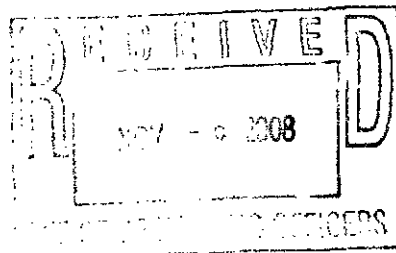
JOHN JOSEPH MAZZELLA (CRD No. 4893599),

RESPONDENT.

DISCIPLINARY PROCEEDING
NO. 2007010339901

COMPLAINT

The Department of Enforcement alleges:



SUMMARY

1. From April 2007 through June 2007, Mazzella submitted three false preliminary insurance applications for three fictitious customers and one preliminary insurance application for an actual customer without that person's authorization or consent. As a result of submitting the false and unauthorized applications, Mazzella obtained \$3,379.28 in commissions from the insurance company. In addition, Mazzella failed to appear for an on-the-record interview (OTR). This conduct violated NASD Conduct Rule 2110 and Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. From January 4, 2005 through July 13, 2007, Mazzella was registered with FINRA (f/k/a National Association of Securities Dealers or NASD) through Pruco Securities, LLC (Pruco Securities) as an Investment Company and Variable

Contracts Products Representative (Series 6). During that time period, Mazzella was also employed at The Prudential Insurance Company of America (Prudential).

3. From September 20, 2007 through December 21, 2007, Mazzella was registered in the same capacity with another member firm. On January 16, 2008, that member firm filed a Form U5 on Mazzella's behalf noting his full termination date of December 21, 2007. Mazzella has not been associated with a member firm since his termination. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Mazzella for the purposes of this Complaint, in that the misconduct alleged in the First and Second Causes of Action occurred while Mazzella was associated with a member firm and the misconduct alleged in the Third Cause of Action, and the filing of this complaint, occurred within two years of Mazzella's last association with a member firm.

FIRST CAUSE OF ACTION
Submitting False Insurance Applications
(NASD Conduct Rule 2110)

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

Fictitious Customer Maryann Testaverde

5. On May 18, 2007, Mazzella electronically submitted to Prudential a false preliminary term life insurance policy application for fictitious customer Maryann Testaverde (M. Testaverde). The value on the policy was \$500,000.
6. The contact information electronically submitted by Mazzella to Prudential for M. Testaverde was fictitious. It did not correspond to any "M. Testaverde."

7. Mazzella falsely indicated in his electronic submission to Prudential that, on May 18, 2007, he had received a \$125.55 electronic funds transfer for the initial premium from this customer. He provided Prudential with a purported customer bank account number and routing number.
8. On or about May 25, 2007, after he had electronically submitted the false term life insurance policy, Prudential paid Mazzella an express commission of \$749.52 into his draw account. Pursuant to Prudential procedures, Mazzella was entitled to the express commission because he had indicated in the electronic submission that M. Testaverde prepaid the initial premium.
9. Mazzella never submitted to Prudential a completed term life insurance application or a premium payment for M. Testaverde. As a result, Prudential withdrew M. Testaverde's term life insurance policy and removed the express commission payment of \$749.52 from Mazzella's draw account.

Fictitious Customer Louis Testaverde

10. On May 18, 2007, Mazzella electronically submitted to Prudential a false preliminary term life insurance policy application for fictitious customer Louis Testaverde (L. Testaverde). The value on the policy was \$500,000.
11. The contact information electronically submitted by Mazzella to Prudential for L. Testaverde was fictitious. It did not correspond to any "L. Testaverde."
12. Mazzella falsely indicated in his electronic submission to Prudential that, on May 18, 2007, he had received a \$126.45 electronic funds transfer for the initial premium from this customer. He provided Prudential with a purported customer bank account number and routing number.

13. On or about May 25, 2007, after he had electronically submitted the false term life insurance policy, Prudential paid Mazzella an express commission of \$853.20 into his draw account. Pursuant to Prudential procedures, Mazzella was entitled to the express commission because he had indicated in the electronic submission that L. Testaverde prepaid the initial premium.
14. Mazzella never submitted to Prudential a completed term life insurance application or a premium payment for L. Testaverde. As a result, Prudential withdrew L. Testaverde's term life insurance policy and removed the express commission payment of \$853.20 from Mazzella's draw account.

Fictitious Customer John Michetti

15. On June 29, 2007, Mazzella electronically submitted to Prudential a false preliminary term life insurance policy application for fictitious customer John Michetti (J. Michetti). The value on the policy was \$500,000.
16. The contact information electronically submitted by Mazzella to Prudential for J. Michetti was fictitious. It did not correspond to any "J. Michetti."
17. Mazzella falsely indicated in his electronic submission to Prudential that, on June 29, 2007, he had received a \$163.15 check for the initial premium from this customer.
18. On or about July 6, 2007, after he had electronically submitted the false term life insurance policy, Prudential paid Mazzella an express commission of \$597.20 into his draw account. Pursuant to Prudential procedures, Mazzella was entitled to the express commission because he had indicated in the electronic submission that J. Michetti prepaid the initial premium.

19. Mazzella never submitted to Prudential a completed term life insurance application or a premium payment for J. Michetti. As a result, Prudential withdrew J. Michetti's term life insurance policy and removed the express commission payment of \$597.20 from Mazzella's draw account.
20. By submitting three false preliminary insurance applications, Mazzella violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
Unauthorized Insurance Transaction
(NASD Conduct Rule 2110)

21. The Department realleges and incorporates by reference paragraphs 1-20 above.
22. In 2006, customer DL purchased a Prudential life insurance policy from Mazzella.
23. On April 6, 2007, without customer DL's authority or consent, Mazzella electronically submitted to Prudential a preliminary term life insurance policy application for him. The value on the policy was \$3,000,000.
24. Mazzella falsely indicated in his electronic submission to Prudential that, on April 6, 2007, he received a \$253.35 electronic funds transfer for the initial premium from customer DL.
25. On or about April 13, 2007, after he had electronically submitted the unauthorized term life insurance policy, Prudential paid Mazzella an express commission of \$1,179.36 into his draw account. Pursuant to Prudential procedures, Mazzella was entitled to the express commission because he had indicated in the electronic submission that customer DL prepaid the initial premium.
26. Mazzella never submitted to Prudential a completed term life insurance application or a premium payment for DL. As a result, Prudential withdrew DL's

term life insurance policy and removed the express commission payment of \$1,179.36 from Mazzella's draw account.

27. By submitting a preliminary insurance application for customer DL without his authorization or consent, Mazzella violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

Failure to Appear for Testimony
(NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

28. The Department realleges and incorporates by reference paragraphs 1-27 above.
29. On November 27, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Mazzella requesting that he appear for an OTR at FINRA's Woodbridge, New Jersey office on Thursday, January 3, 2008 (the First Request). In the addendum to the letter, Mazzella was informed that his failure to appear at an OTR may subject him to disciplinary action and the imposition of sanctions including a bar, suspension, censure and/or a fine.
30. The First Request was sent by first class mail to Mazzella's residential address as reflected in the records of the Central Registration Depository (CRD), [REDACTED] [REDACTED] (the CRD Address). The first class mail envelope sent to Mazzella was not returned to staff.
31. On November 30, 2007, Mazzella called FINRA staff and informed them that he had received the First Request. Additionally, Mazzella said that there was no reason for him to appear at the OTR because he had not violated any rules. Staff instructed Mazzella that he was obligated to appear. Mazzella then replied that he would appear but he would have to take the train because he did not have a driver's license.

32. On January 3, 2008, Mazzella did not appear for the scheduled OTR. At 9:45 A.M. that day, FINRA staff placed a telephone call to Mazzella at his home and left a voice message on his answering machine regarding his failure to appear for the scheduled OTR. FINRA staff did not receive a response from Mazzella.
33. On January 9, 2008 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Mazzella requesting that he appear for an OTR at FINRA's Woodbridge, New Jersey office on Tuesday, January 22, 2008 (the Second Request). In the addendum to the letter, Mazzella was informed that his failure to appear at an OTR may subject him to disciplinary action and the imposition of sanctions including a bar, suspension, censure and/or a fine.
34. The Second Request was sent by first class and certified mail to Mazzella's CRD Address. The first class envelope was not returned. The certified envelope was returned to staff on February 15, 2008 as "Unclaimed."
35. On January 22, 2008, Mazzella did not appear for the scheduled OTR.
36. The staff is not aware of a more current residential address or of a business address for Mazzella.
37. By failing to appear for two OTRs, Mazzella violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RELIEF REQUESTED

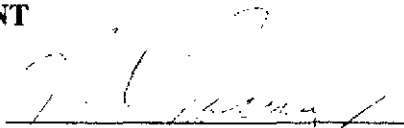
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed; and

- 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

Dated: November 3, 2008



Noel C. Downey, Principal Regional Attorney
John M. D'Amico, Regional Chief Counsel
FINRA Department of Enforcement
581 Main Street, Suite 710
Woodbridge, NJ 07095
(732) 596-2042; Fax: (202) 721-6548
noel.downey@finra.org
john.d'amico@finra.org