

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD R. DUNAKIN, III
(CRD No. 2838663),

Respondent.

Disciplinary Proceeding
No. 20070105588-01

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

November 5, 2009

Respondent is barred from associating with any member firm in any capacity for making unsuitable recommendations, in violation of Conduct Rules 2310(a) and 2110; and providing false testimony to FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

John S. Han, Senior Regional Counsel, San Francisco, CA, for the Department of Enforcement.

No appearance by or on behalf of Donald R. Dunakin, III.

DECISION

I. Introduction

On July 6, 2009, the FINRA Department of Enforcement filed the attached Complaint against Donald R. Dunakin, III. The Complaint contains two related charges. First, the Complaint charges that Dunakin made unsuitable recommendations and effected more than 100 securities transactions in a customer's account over a period of three years between December 2004 and November 2007, in violation of Conduct Rules 2310(a) and 2110. Second, the Complaint charges that, on November 20, 2008, Dunakin testified falsely under oath at his on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2110.

FINRA has jurisdiction of this proceeding pursuant to Article V, Section 4 of the FINRA By-Laws.¹ Dunakin was registered with FINRA as a General Securities Representative when he made the unsuitable recommendations to customer MS and when he testified at his on-the-record interview. In addition, Dunakin received constructive notice of this proceeding. On July 6, 2009, Enforcement served the Notice of Complaint on Dunakin by first-class certified mail (return receipt requested) sent to his residential address recorded in the Central Registration Depository ("CRD").² The certified mailing receipt was returned to Enforcement, bearing the signature of "Jessica Dunakin."³ On August 4, 2009, Enforcement served the Second Notice of Complaint on Dunakin by first-class certified mail (return receipt requested) sent to the same address.⁴ The U.S. Postal Service website reflects that the certified mailing was delivered on August 12, 2009.⁵

Dunakin did not answer or otherwise respond to the Complaint. Accordingly, on September 25, 2009, Enforcement filed a Motion for Entry of a Default Decision with the Office of Hearing Officers. The motion is supported by the Declaration of John S. Han, Esq., and seven exhibits.⁶ The Respondent did not reply to the motion. The Hearing Officer therefore granted Enforcement's motion.

Based on the facts alleged in the Complaint, which are deemed admitted pursuant to Rules 9215(f) and 9269(a), Dunakin is barred from associating with any member firm in any capacity for making unsuitable recommendations to Customer MS and for testifying falsely in his on-the-record interview.

¹ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

² Declaration of John S. Han ("Han Decl.") ¶ 11.

³ *Id.* ¶ 12.

⁴ *Id.* ¶ 14.

⁵ *Id.* ¶ 15.

⁶ The exhibits are labeled CX-1 through CX-7.

II. Findings of Fact and Conclusions of Law

A. Background and Origin of Disciplinary Proceeding

Dunakin entered the securities industry on December 1996. At times relevant to this proceeding, he was associated with Brookstreet Securities Corporation, Delta Equity Services Corporation, and GunnAllen Financial, Inc. At each of the foregoing FINRA member firms, Dunakin also was registered with FINRA as a General Securities Representative.⁷ Dunakin's registration through GunnAllen ended on April 27, 2009, and he has not been associated with a member firm, or registered with FINRA, since that date.⁸

FINRA first opened an investigation of Dunakin in September 2007 after FINRA received a Uniform Termination Notice for Securities Industry Registration (Form U5) filed on Dunakin's behalf by Delta. The Form U5 disclosed that Delta had permitted Dunakin to resign after it discovered higher than recommended commission-to-equity ratios in certain of his accounts.⁹ One of the accounts belonged to MS, who had first opened an account with Dunakin at Brookstreet in 2004.

B. Unsuitable Recommendations

The First Cause of Action alleges that Dunakin first met MS in the summer of 2004 when he was a registered representative at Brookstreet. Dunakin spoke to MS about opening a securities account at Brookstreet, and he ultimately recommended an investment plan that involved funding her account with the proceeds from a home loan. Dunakin recommended that

⁷ CX-2.

⁸ *Id.*

⁹ Han Decl. ¶ 18.

she invest the net loan proceeds and use the investment returns to pay the loan interest costs.¹⁰

Dunakin referred MS to a mortgage broker to help her secure a home loan.

MS followed Dunakin's advice, and, in November 2004, MS borrowed \$216,000 secured by a mortgage on her residence.¹¹ She used the net loan proceeds of \$125,000 to open a margin account at Brookstreet.¹² At the time, MS was 80 years old and retired. Her annual income from all sources was approximately \$15,400. Her stated investment objective was, "Growth & Income."¹³

Dunakin repeatedly made unsuitable recommendations to MS when he was associated with Brookstreet and Delta. Between December 2004 and November 2007, Dunakin recommended and effected approximately 100 securities transactions in MS's account, approximately 59 of which were purchase transactions of listed stock. Dunakin also recommended that MS purchase stock on margin. MS's average monthly margin balance was approximately \$58,668. During the same period, the average monthly equity in MS's account was approximately \$95,534.¹⁴

From the Brookstreet new account documentation, Dunakin knew that the only funds MS had to invest were borrowed and that she would not have other available resources to cover any margin calls in her account if the need should arise. Dunakin also knew that she needed the mortgage loan proceeds to pay her living expenses, including the mortgage on her residence.

¹⁰ Han ¶ 20.

¹¹ *Id.* ¶ 9.

¹² *Id.* ¶¶ 10-11.

¹³ *Id.* ¶ 22.

¹⁴ *Id.* ¶ 25.

As a result of Dunakin's recommendations, MS sustained market losses of approximately \$11,000 and paid margin interest totaling more than \$13,000.¹⁵

The Hearing Officer finds that the allegations in the First Cause of Action are sufficient to establish that Dunakin violated Conduct Rules 2310(a) and 2110 by making unsuitable recommendations to MS. Conduct Rule 2310 requires that a registered representative have reasonable grounds for believing, on the basis of information furnished by the customer, and after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, that the recommended transaction is not unsuitable for the customer.¹⁶ A recommendation is not suitable merely because the customer acquiesces in the recommendation. The recommendation must be consistent with the customer's financial situation and needs and consistent with the customer's best interests.¹⁷

Dunakin's recommendations were unsuitable for MS. Dunakin knew that she had limited resources and was retired, living on a fixed and modest income. He also knew that she had borrowed the money in her account and that she had no other assets apart from her home. Because of her limited means and net worth, she could not afford the loss of substantially all of the borrowed assets she had invested in her account with Dunakin. All of these factors demanded that Dunakin recommend a conservative investment strategy with limited investment risk. Nonetheless, Dunakin recommended a high number of stock purchases on margin. These recommendations were not consistent with MS's financial situation and needs.

¹⁵ Han Decl. ¶ 27.

¹⁶ See *Dane S. Faber*, Exchange Act Release No. 49216, 2004 SEC LEXIS 277, at *23 (Feb. 10, 2004).

¹⁷ *Id.* at *23-24.

C. Failure to Respond to Requests for Information

The Second Cause of Action alleges that Dunakin provided false sworn testimony to FINRA staff in the course of the investigation that led to the filing of the Complaint in this proceeding. According to the Complaint, on November 20, 2008, FINRA staff questioned Dunakin about his involvement with MS's home loan. Dunakin denied that he had any involvement with the loan and that he first learned of the loan when she opened her account at Brookstreet. After Dunakin's on-the-record interview, the staff obtained documents that showed that Dunakin had referred MS to the mortgage broker. MS and the mortgage broker also confirmed that Dunakin had referred MS to the mortgage broker for the purpose of obtaining a loan to fund her investment account with Dunakin.¹⁸

The Hearing Officer finds that the allegations in the Second Cause of Action are sufficient to establish that Dunakin violated Procedural Rule 8210 and Conduct Rule 2110 by testifying falsely at his on-the-record interview on November 20, 2008.

III. Sanctions

A. Unsuitable Recommendations

The FINRA Sanction Guidelines for unsuitable recommendations provides for a suspension of ten business days to one year, and, in egregious cases, for a longer suspension or a bar.¹⁹ The Sanction Guidelines also recommend a fine of up to \$75,000.

Applying the applicable Sanction Guidelines, including the Principal Considerations applicable to all sanctions determinations, the Hearing Officer finds that Respondent's violation was egregious.

¹⁸ Han Decl. ¶¶ 33-37.

¹⁹ FINRA Sanction Guidelines 99 (2007), available at www.finra.org/sanctionguidelines.

The Hearing Officer was most troubled by the specific nature of Dunakin's suitability violations. Dunakin's course of trading—and in particular, his use of margin where he knew that MS had borrowed all of the funds in her account—was reckless and highly unsuitable. Moreover, Dunakin engaged in this risky and unsuitable trading for approximately three years. As such, Dunakin engaged in a pattern of misconduct over an extended period of time.²⁰ Other aggravating factors are the fact that Dunakin engaged in this pattern of trading for his own gain, he failed to take responsibility for his wrongdoing, and he caused his customer harm. On the other hand, the record contains no mitigating factors. Accordingly, the Hearing Officer will bar Dunakin for his violations of the suitability rule.

B. Failure to Respond to Requests for Information

The Sanction Guidelines recommend a bar when a respondent fails to respond truthfully to a request for information and there are no mitigating factors.²¹ Here, the Respondent lied under oath at this on-the-record interview in order to escape liability for his unsuitable recommendations and trading in MS's account. There are no mitigating factors. Accordingly, the Hearing Officer will bar Dunakin for this violation as well.

IV. Order

Donald R. Dunakin, III is barred from associating with any member firm in any capacity for making unsuitable recommendations, in violation of Conduct Rules 2310(a) and 2110; and for providing false testimony to FINRA staff, in violation of Procedural Rule 8210 and Conduct

²⁰ FINRA Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

²¹ FINRA Sanction Guidelines 35.

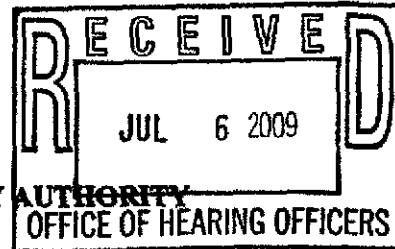
Rule 2110. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

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

Andrew H. Perkins
Hearing Officer

Copies to:

Donald R. Dunakin, III (by FedEx, next day delivery, and first-class mail)
John S. Han, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic mail)
David R. Sonnenberg, Esq. (by electronic mail)



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

Department of Enforcement,

Complainant,

v.

Donald R. Dunakin, III (CRD No. 2838663),

Respondent.

DISCIPLINARY PROCEEDING
No. 20070105588-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Donald R. Dunakin, III, advised customer MS, an 80-year-old retiree, to obtain a home loan and use the proceeds to fund a securities account. Using the loan proceeds, Respondent recommended and effected over 100 securities transactions in MS's account over a period of more than two years. Based on MS's financial circumstances, those transactions, which resulted in a net loss, were unsuitable.
2. Further, in sworn testimony to FINRA staff, Respondent falsely denied urging MS to obtain the home loan and falsely denied helping her obtain the loan.

RESPONDENT AND JURISDICTION

3. Respondent entered the securities industry in December 1996 as an associated person of a FINRA member. In July 1998, Respondent became registered as a General Securities Representative (GS).
4. From on or about May 10, 2000 through August 16, 2006, Respondent was registered as a GS at former FINRA member Brookstreet Securities Corporation. From on or

about August 15, 2006 through August 21, 2007, Respondent was registered as a GS at FINRA member Delta Equity Services Corporation.

5. From on or about August 21, 2007, through April 9, 2009, Respondent was registered as a GS at FINRA member GunnAllen Financial, Inc.
6. Respondent is not currently registered with a FINRA member. On or about May 4, 2009, GunnAllen filed an amendment to Respondent's Uniform Termination Notice for Securities Industry Registration, disclosing that Respondent may have engaged in conduct actionable under FINRA rules and SEC regulations. Pursuant to Article V, Section 4(a)(i) of the FINRA By-Laws, Respondent remains subject to FINRA's jurisdiction.

FACTS COMMON TO ALL CAUSES OF ACTION

7. The Department realleges and incorporates by reference paragraphs 1 through 6, above.
8. In the summer of 2004, Respondent met with customer MS to discuss opening an account at Brookstreet. Respondent recommended that she obtain a home loan to fund the account.
9. To help her obtain the loan, Respondent referred MS to mortgage broker ED. On or about November 16, 2004, MS borrowed approximately \$216,000, secured by a mortgage on her home. She used approximately \$89,000 to pay off an existing mortgage and set aside \$125,000.00 for investment with Respondent.
10. On or about November 17, 2004, MS completed and signed a New Brokerage Account Application to open a margin account at Brookstreet with Respondent. On the application, MS indicated that she was 80 years old, retired, and her approximate

annual income from all sources was \$15,408. Respondent signed the application on or about November 19, 2004. The account was opened on or about December 3, 2004.

11. On or about December 7, 2004, MS deposited \$125,000.00 of the home loan proceeds in her Brookstreet account.
12. From on or about December 7, 2004, through August 31, 2006, Respondent recommended and effected approximately 39 purchase transactions, primarily of individual stocks, in MS's Brookstreet account.
13. In August 2006, Respondent left Brookstreet and became associated with Delta. MS transferred her account from Brookstreet to Delta at or around the same time, and Dunakin remained the registered representative of record for MS's account. Like her Brookstreet account, MS's Delta account was also a margin account.
14. From on or about August 1, 2006, through September 30, 2007, Respondent recommended and effected approximately 20 purchase transactions in MS's Delta account.
15. In August 2007, Respondent left Delta and became associated with GunnAllen. MS transferred her account from Delta to GunnAllen shortly thereafter and Dunakin remained the registered representative of record for MS's account. Like her Delta and Brookstreet accounts, MS's GunnAllen account was also a margin account.
16. Respondent did not recommend or effect any purchases in MS's GunnAllen account. The positions that had been transferred from Delta were liquidated in November 2007.

17. From December 7, 2004, through November 30, 2007, Respondent's use of margin to purchase and hold securities caused MS to incur margin interest charges totaling over \$13,000.
18. Of the original \$125,000.00 deposited into MS's Brookstreet account on December 7, 2004, MS withdrew a total of approximately \$50,795 through November 30, 2007, primarily for mortgage payments. Consequently, had she remained completely uninvested, she would have had approximately \$74,205 remaining. As of November 30, 2007, MS's GunnAllen account had a value of \$63,366.10.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unsuitable Recommendations (Rules 2310(a) and 2110)

19. The Department realleges and incorporates by reference paragraphs 1 through 18, above.
20. During the period that Respondent recommended securities transactions to MS, he knew that MS did not have the financial resources to purchase securities without using borrowed funds and that all of the funds deposited to the account were loan proceeds. Respondent also knew that the loan was secured by MS's home and that MS was withdrawing money from the account to meet her monthly expenses, including her mortgage obligation. He knew, or should have known, that losses in the account could place MS at risk of losing her home.
21. Because Respondent knew that MS could not pay for the purchases of securities he recommended without borrowed funds, Respondent did not have a reasonable basis for believing that his recommendations were suitable for MS in light of her financial circumstances and needs. Respondent's recommendations exceeded MS's financial

capability and exposed MS to material risk. Each recommendation to purchase a security with borrowed funds constituted a violation of NASD Rules 2310 and 2110 by Respondent.

22. Respondent also recommended that MS purchase securities on margin. The use of margin increased MS's exposure to loss because each margin loan effectively amounted to debt secured by debt. Respondent did not have a reasonable basis for believing that recommending the use of margin to purchase securities was suitable for MS in light of MS's financial circumstances and needs. Each recommendation to purchase a security on margin constituted a violation of NASD Rules 2310 and 2110.

**SECOND CAUSE OF ACTION
Providing False Testimony to FINRA (Rules 8210 and 2110)**

23. The Department realleges and incorporates by reference paragraphs 1 through 22, above.
24. On November 20, 2008, pursuant to NASD Rule 8210, FINRA staff obtained Respondent's sworn testimony in connection with an investigation of Respondent's activities in MS's accounts.
25. Respondent testified that he first learned about MS's home loan on or after the day that he received the check to fund her Brookstreet account. He testified that, prior to learning about the loan, he had no discussions with MS about how to fund her account. He further testified that he had no involvement in MS obtaining her home loan.
26. Respondent's testimony was false because, as described in paragraphs 8 and 9, he recommended that MS obtain the home loan and referred her to ED in order to help her obtain the loan.

27. By providing false testimony to FINRA, Respondent committed separate and distinct violations of NASD Rules 8210 and 2110.

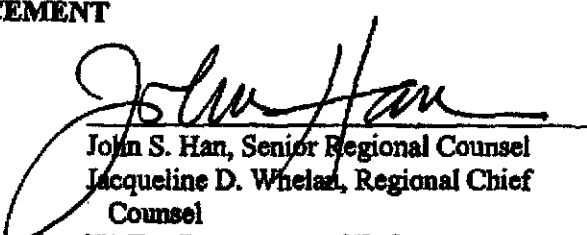
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent make full and complete restitution, together with interest.
- 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: July 6, 2009



John S. Han, Senior Regional Counsel
Jacqueline D. Whelan, Regional Chief
Counsel

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