

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

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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.

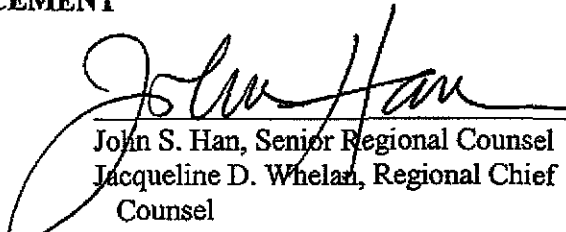
RELIEF REQUESTED

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


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