

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

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

JERETTE LESLIE LERNER
(CRD No. 2336016),

Respondent.

Disciplinary Proceeding
No. 2007010748901

Hearing Officer – MC

January 4, 2010

Respondent is barred from associating with any FINRA member firm in any capacity for violating Conduct Rule 2110 by conducting securities business with an unregistered person, and for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to provide testimony as directed by FINRA staff pursuant to Procedural Rule 8210.

Appearances

Lynn M. Kaseta, Senior Regional Counsel, and Michael J. Newman, Senior Regional Counsel, Woodbridge, NJ, for the Department of Enforcement.

No appearance by or on behalf of Respondent Jerette Leslie Lerner.

DECISION

I. Introduction

On January 12, 2009, the Department of Enforcement (“Enforcement”) filed the attached two-cause Complaint in this disciplinary proceeding. The First Cause of Action alleges that Respondent Jerette Leslie Lerner (“Lerner”) violated Conduct Rule 2110 when she conducted securities business with an unregistered person by entering customer trades on that individual’s behalf. The Second Cause of Action alleges Lerner violated Conduct Rule 2110 and Procedural Rule 8210 when she failed to appear and provide

testimony in response to requests issued to her by FINRA staff pursuant to Procedural Rule 8210.¹

Enforcement served the Complaint and Notice of Complaint by first-class and registered mail on Lerner at her last known residential address appearing in the Central Registration Depository ("CRD address"). Lerner filed an Answer to the Complaint on February 6, 2009, confirming that she had received service of the Complaint at her CRD address.

On September 15, 2009, Lerner failed to appear at a pre-hearing conference as ordered. Subsequently, Lerner failed to respond after being ordered to show cause why she should not be deemed in default, pursuant to Procedural Rule 9269, for failure to appear at the pre-hearing conference.

On November 6, 2009, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Lynn M. Kaseta and two exhibits.² For the reasons set forth below, the Default Motion is granted.³

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Lerner's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-_" with the appropriate exhibit and page numbers. References in this Default Decision to the Declaration will be referred to as "Decl." or "Kaseta 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 Kaseta Declaration, and the exhibits filed by Enforcement.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Lerner first registered with FINRA as a General Securities Representative on May 5, 1993. During the period relevant to this disciplinary proceeding, from March 26, 2004, to June 16, 2006, she was registered as a General Securities Representative with FINRA member firm A.G. Edwards & Sons, Inc. ("AGE"). From July 27, 2006, through June 5, 2007, Lerner was registered through another FINRA member firm. She is not currently associated with any member firm.⁴ The misconduct alleged in the First Cause of Action of the Complaint occurred while Lerner was associated with AGE. The violations alleged in the Second Cause of Action of the Complaint occurred within two years of Lerner's last registration with a member firm, and the Complaint was filed within that period, on January 12, 2009.

For these reasons, by the terms of Article V, Section 4 of FINRA's By-Laws, Lerner remains subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding.

B. Lerner's Default

The Initial Pre-Hearing Conference in this disciplinary proceeding was scheduled for February 23, 2009. On February 16, 2009, however, Lerner filed a notice that for medical reasons she would be unable to participate. On February 25, 2009, Lerner filed a supplementary notice that contained copies of letters from two physicians stating that her medical condition required postponing "appointments" and removing "legal pressure" related to this disciplinary proceeding until Lerner's "medical needs have run their

⁴ CX-1, pp. 3-6.

course.” One of Lerner’s physicians suggested postponing further proceedings until September 1, 2009.

Accordingly, an Order Cancelling Scheduled Pre-Hearing Conference and Staying Proceeding (“Stay Order”) was issued on March 23, 2009. The Stay Order suspended further proceedings and directed Lerner to provide an updated report on her medical status from her physicians by September 1, 2009.

Lerner failed to provide any information on her medical status by September 1, 2009, as directed. Consequently, on September 8, 2009, an Order Setting Pre-Hearing Conference was served upon Lerner by FedEx, overnight delivery, and first-class mail at her CRD address.⁵ The Order Setting Pre-Hearing Conference directed the parties to appear and participate in the pre-hearing conference by telephone on September 15, 2009. The purpose of the pre-hearing conference was to ascertain Lerner’s medical status and to attempt to schedule a hearing for this disciplinary proceeding. The Order Setting Pre-Hearing Conference provided a call-in number and instructions for participation. It also informed the parties that failure to appear at the pre-hearing conference, in person or through counsel or a representative, might be deemed a default.

On September 15, 2009, the pre-hearing conference commenced at the appointed time. Counsel for Enforcement appeared. Lerner failed to appear. The Case Administrator unsuccessfully attempted to reach Lerner by telephone at a number she had previously provided and at which the Case Administrator previously had been able to contact Lerner. The Case Administrator left a recorded message reminding Lerner of the

⁵ FedEx confirmed the Order Setting Pre-Hearing Conference was delivered to Lerner’s CRD address on September 9, 2009.

pre-hearing conference and requesting that she contact the Office of Hearing Officers as soon as possible.

Lerner did not contact the Office of Hearing Officers or otherwise respond to the Case Administrator's message.

Consequently, an Order to Show Cause was issued on September 22, 2009, and served upon Lerner by FedEx, overnight delivery, and by first-class mail at her CRD address.⁶ The Order directed Lerner to show cause why she should not be held in default for failure to appear at the pre-hearing conference. The Order to Show Cause set a deadline of October 1, 2009, for Lerner to file a response. Lerner has not responded in any manner to the Order to Show Cause.

Lerner defaulted by failing to appear at the Pre-Hearing Conference on September 15, 2009, and, subsequently, by failing to respond to the Order to Show Cause. Accordingly, pursuant to Procedural Rules 9241 and 9269, Lerner is in default and the allegations in the Complaint are deemed admitted.

C. Violations

1. Introduction

After AGE terminated Lerner for engaging in unacceptable business practices, FINRA staff initiated an investigation.⁷ In the course of the investigation, FINRA staff made repeated efforts to procure Lerner's appearance for an on-the-record interview ("OTR") pursuant to Procedural Rule 8210. At Lerner's request, FINRA staff postponed

⁶ FedEx confirmed the Order to Show Cause was delivered to Lerner's CRD address on September 23, 2009.

⁷ CX-1; Decl., ¶ 10.

the OTR twice. After Lerner failed to attend the fourth scheduled OTR, Enforcement filed the two-cause Complaint in this disciplinary proceeding.⁸

2. Conducting Securities Business with Unregistered Person

In March or April 2004, Lerner agreed to enter trades on behalf of a former registered representative, MJ, who had resigned from a FINRA member firm and had not reassociated with another member firm.⁹ From March 2005 through May 2006, Lerner entered approximately 206 securities transactions for two elderly customers at MJ's request,¹⁰ thereby aiding MJ in circumventing the requirement that he be registered in order to engage in securities business on behalf of customers.¹¹ Lerner knew that MJ was recommending, offering and selling securities although he was not registered when he met with the customers and that by entering trades on MJ's behalf Lerner facilitated his misconduct.¹² By these actions, as alleged in the First Cause of Action of the Complaint, Lerner conducted securities business with an unregistered person and thereby violated Conduct Rule 2110.

3. Failure to Appear and Provide Testimony

On March 2, 2007, FINRA staff sent a request pursuant to Procedural Rule 8210 to Lerner to appear for an OTR on April 5, 2007. The request was sent to Lerner at her

⁸ Complaint, ¶¶ 14-28.

⁹ *Id.*, ¶¶ 7-9. MJ was permitted to resign after his member firm employer received numerous customer complaints about his business conduct.

¹⁰ *Id.*, ¶ 10.

¹¹ Decl. ¶ 15.

¹² Complaint, ¶ 11.

CRD address by first-class and registered mail, and a copy was sent to her attorney.¹³ Lerner's attorney requested a postponement of the scheduled OTR.¹⁴ In response, FINRA staff issued a request pursuant to Procedural Rule 8210 for Lerner to appear for an OTR on June 7, 2007; the request was sent on May 18, 2007, by first-class and certified mail to Lerner's CRD address, with a copy to her lawyer.¹⁵ The certified mailing sent to Lerner's CRD address was returned marked "Unclaimed Return to Sender."¹⁶ The first-class mailing was not returned.¹⁷ On May 21, 2007, however, Lerner's attorney contacted FINRA staff to report that Lerner was unable to attend the scheduled OTR on June 7, 2007. FINRA staff therefore agreed to reschedule the OTR for July 2, 2007.¹⁸ Accordingly, on June 1, 2007, pursuant to Procedural Rule 8210, FINRA staff issued a request by certified and first-class mail to Lerner at her CRD address to appear for an OTR on July 2, 2007, with a copy to Lerner's attorney.¹⁹ In response, Lerner's attorney sent two letters dated June 29, 2007, informing FINRA staff that (i) Lerner would not attend the OTR on July 2, 2007, and (ii) he no longer represented Lerner.²⁰ When Lerner failed to appear for the July 2, 2007 OTR,²¹ FINRA

¹³ Complaint, ¶ 14.

¹⁴ *Id.*, ¶ 17.

¹⁵ *Id.*, ¶ 18.

¹⁶ *Id.*, ¶ 19.

¹⁷ *Id.*, ¶ 20.

¹⁸ *Id.*, ¶ 21.

¹⁹ *Id.*, ¶ 22.

²⁰ *Id.*, ¶ 23.

²¹ *Id.*, ¶ 24.

staff issued, pursuant to Procedural Rule 8210, a fourth request to Lerner at her CRD address by certified and first-class mail requiring her to appear for an OTR, this time scheduled for July 9, 2007.²² The certified mailing was returned marked “Unclaimed Return to Sender” but the first-class mailing was not returned.²³ Once again, Lerner failed to appear for the OTR.²⁴

Based upon these facts, as alleged in the Second Cause of Action of the Complaint, Lerner failed to appear for on-the-record interviews as required after being properly served with requests issued by FINRA staff pursuant to Procedural Rule 8210. In so doing, Lerner violated Conduct Rule 2110 and Procedural Rule 8210.

III. Sanctions

FINRA’s Sanction Guidelines do not address misconduct consisting of conducting securities business with an unregistered person. As Enforcement argues, however, Lerner’s conduct in this matter qualifies as egregious. By entering 206 securities transactions involving elderly customers on behalf of an unregistered person, Lerner engaged in numerous intentional acts, constituting a pattern of misconduct, over an extended period of time.

Furthermore, Lerner’s misconduct essentially allowed an unregistered person to engage in the securities business by effecting securities transactions for customers. For engaging in the securities business without being registered, the Sanction Guidelines recommend imposing a fine of \$2,500 to \$50,000, and suspending an individual in any or

²² Complaint, ¶ 25.

²³ *Id.*, ¶¶ 26-27.

²⁴ *Id.*, ¶ 28.

all capacities for up to six months; in egregious cases, the Sanction Guidelines recommend imposing a suspension of up to two years, or a bar.²⁵ It has been held that the requirement that a person be registered in order to engage in the securities business is an important safeguard, designed to protect the investing public.²⁶ Lerner's misconduct circumvented this safeguard. Because of the egregiousness of these violations, and the absence of any mitigating circumstances in this case, a bar is the appropriate sanction for Lerner's violations of Conduct Rule 2110 by conducting securities business with an unregistered person.

The Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²⁷ If there are mitigating factors, the Sanction Guidelines recommend consideration of a suspension in any or all capacities for up to two years.

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

²⁵ *FINRA Sanction Guidelines*, p. 48 (2007).

²⁶ *Michael Brian Kormos*, 1995 SEC LEXIS 3627, *6 (June 8, 1995).

²⁷ *Sanction Guidelines*, *supra*, p. 35.

information.”²⁸ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”²⁹

Here, the Staff made repeated efforts to obtain information from Lerner at an OTR pursuant to Procedural Rule 8210 to investigate serious allegations. The circumstances of Lerner’s repeated refusals to comply with her obligation to provide testimony as requested under Procedural Rule 8210 are aggravating. The record contains no mitigating circumstances. FINRA staff twice postponed the dates set for the OTR to accommodate Lerner. Despite the postponements, Lerner’s attorney informed FINRA staff that Lerner would not appear at the third scheduled OTR. It is clear, therefore, that Lerner was aware of the fact that the interviews had been scheduled and that, even though FINRA staff postponed scheduled interviews to accommodate Lerner, she refused to attend. A bar, therefore, is the appropriate sanction for Lerner’s failure to appear to provide testimony as required by Procedural Rule 8210.

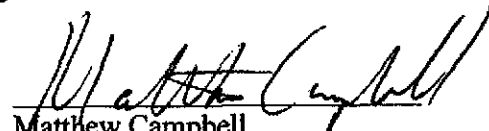
IV. Order

Respondent Jerette Leslie Lerner is barred from associating in any capacity with any FINRA member firm for violating Conduct Rule 2110 by conducting securities business with an unregistered individual, and for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to provide testimony in response to requests issued by FINRA staff pursuant to Procedural Rule 8210.

²⁸ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

²⁹ *Id.* at *41.

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:

Jerette L. Lerner (via FedEx and first-class mail)
Lynn M. Kaseta, Esq. (via electronic and first-class mail)
Michael J. Newman, Esq. (via electronic and 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.

Jerette Leslie Lerner
(CRD No. 2336016),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007010748901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Jerette Leslie Lerner conducted a securities business with an unregistered individual and failed to appear for on-the-record interviews requested by FINRA staff. This conduct violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. On May 5, 1993, Lerner became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) as a General Securities Representative. From March 26, 2004 to May 19, 2006, Lerner was registered in that same capacity through member firm A.G. Edwards & Sons, Inc.

3. From July 27, 2006 through May 7, 2007, Lerner was registered through another member firm.
4. Lerner is not currently associated with a member firm.
5. Lerner remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of the FINRA By-Laws in that: the misconduct alleged in the First Cause of Action occurred while Lerner was associated with a member firm; and this Complaint was filed within, and the violations of NASD Procedural Rule 8210 alleged in the Second Cause of Action occurred within, two years of her last association with a member firm.

FIRST CAUSE OF ACTION

Conducting Securities Business with an Unregistered Individual (NASD Conduct Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. On March 26, 2004, former registered representative MJ was permitted to resign from a member firm following numerous customer complaints.
8. Thereafter, MJ did not reassociate with another member firm.
9. In or about March/April 2004, Lerner entered into an arrangement with MJ whereby she agreed to help him circumvent registration requirements by entering customer trades on his behalf.
10. From March 2005 through May 2006, and pursuant to MJ's requests, Lerner entered approximately 206 securities transactions for elderly customers PT and HG at her employer member firm.

11. Lerner knew that MJ was not registered with FINRA at the time he met with customers PT and HG. She was also aware that MJ was recommending, offering and selling securities to them. Indeed, Lerner was generally not present during MJ's meetings and discussions with those customers. Nevertheless, Lerner took no steps to stop MJ from engaging in this activity. Moreover, by entering trades at MJ's request, Lerner facilitated his misconduct.
12. By entering the trades at the behest of an unregistered individual and permitting him to engage in a securities business, Lerner violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Failures to Appear for On-the-Record Interviews (NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. On March 2, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Lerner at her last known residential address as reflected in the records of FINRA's Central Registration Depository: [REDACTED]
[REDACTED] (CRD Address). The letter requested, pursuant to NASD Procedural Rule 8210, that Lerner appear for an on-the-record interview (OTR) on April 5, 2007 at the Woodbridge District Office. The letter was sent by first-class and certified mail. The Addendum attached to this letter warned Lerner that if she did not appear for the OTR she could be subject to disciplinary action and that possible sanctions included a bar. A copy of the letter was also mailed to JB, Lerner's defense attorney.

15. The certified mail envelope was returned by the Postal Service to the Woodbridge District Office marked "UNCLAIMED RETURNED TO SENDER."
16. The first-class envelope was not returned to the staff.
17. On March 20, 2007, JB contacted FINRA staff seeking an extension of the OTR date.
18. On May 18, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a second letter to Lerner at her CRD Address requiring her to appear for an OTR on June 7, 2007 at the Woodbridge District Office. The letter was sent by first-class and certified mail. The Addendum attached to this letter warned Lerner that if she did not appear for the OTR she could be subject to disciplinary action and that the possible sanctions included a bar. A copy of this letter was again mailed to JB at his law office.
19. The certified mail envelope was returned by the Postal Service to the Woodbridge District Office marked "UNCLAIMED RETURN TO SENDER."
20. The first-class envelope was not returned.
21. On May 21, 2007, JB contacted FINRA staff and advised that Lerner would not be able to attend the OTR on June 7, 2007. JB and FINRA staff agreed to schedule the OTR for July 2, 2007.
22. On June 1, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a third letter to Lerner at her CRD Address requiring her to appear for an OTR on July 2, 2007 at the Woodbridge District Office. The letter was sent by first-class and certified mail. The Addendum attached to this letter warned Lerner that if she

did not appear for the OTR she could be subject to disciplinary action and that the possible sanctions included a bar. A copy of this letter was mailed to JB at his law office.

23. By two letters dated June 29, 2007, JB advised FINRA staff that Lerner would not attend the OTR scheduled on July 2, 2007 and that he no longer represented her.
24. Lerner did not appear for the OTR on July 2, 2007.
25. On July 2, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a fourth letter to Lerner at her CRD Address requiring her to appear for an OTR on July 9, 2007 at the Woodbridge District Office. The letter was sent by first-class and certified mail. The Addendum attached to this letter warned Lerner that if she did not appear for the OTR she could be subject to disciplinary action and that the possible sanctions included a bar.
26. The certified mail envelope was returned by the Postal Service to the Woodbridge District Office marked "UNCLAIMED RETURN TO SENDER."
27. The first-class envelope was not returned.
28. Lerner did not appear for the OTR on July 9, 2007.
29. The staff is not aware of any more current residential or business addresses for Lerner.
30. By failing to appear for an OTR, Lerner violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

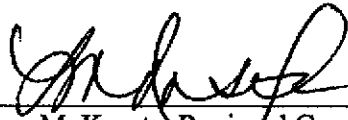
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

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

FINRA DEPARTMENT OF ENFORCEMENT

Dated: January 12, 2009



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