

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL R. ECTON
(CRD No. 4579793),

Respondent.

Disciplinary Proceeding
No. 2007010784701

Hearing Officer – LBB

DEFAULT DECISION

April 14, 2010

Respondent Michael R. Ecton is barred from associating with any FINRA member firm in any capacity for each of three violations: falsifying documents in violation of NASD Conduct Rule 2110, making misrepresentations to his member firm in violation of NASD Conduct Rule 2110, and failing to provide information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Pamela Shu, Senior Regional Counsel, Chicago, Illinois, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on September 17, 2009, asserting three causes of action against Respondent Michael R. Ecton ("Respondent"): (i) falsifying documents, in violation of NASD Conduct Rule 2110; (ii) making false statements to his member firm during an internal investigation, in violation of

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NASD Conduct Rule 2110; and (iii) failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.¹

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint. On February 12, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Enforcement attorney Pamela Shu and 16 exhibits. Respondent did not respond to the motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.²

I. Respondent's Default

Enforcement served Respondent with the Complaint and Notice of Complaint on September 17, 2009, by first-class and certified mail, at Respondent's last-known residential address, as listed in FINRA's Central Registration Depository ("CRD"). The first-class mailing was not returned to FINRA. The certified mailing was returned, stamped "Unclaimed - Return to Sender, Unclaimed, Unable to Forward." Shu Decl. ¶ 6; CX-3.

On November 16, 2009, Enforcement served Respondent with the Complaint and Second Notice of Complaint, by first-class and certified mail, at Respondent's CRD address. The first-class mailing was not returned to Enforcement. The certified mailing return receipt was returned to Enforcement, with an illegible signature. Shu Decl. ¶ 7; CX-5. Respondent sent a letter to

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 Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion. References to the Declaration submitted by Pamela Shu are cited as "Shu Decl. ¶ ____." The exhibits attached to the Declaration are cited as "CX-____."

Enforcement, dated November 20, 2009, referencing the Complaint number for this proceeding, and offering to settle this matter by asking FINRA to “revoke my registration for life.” Shu Decl. ¶ 9, fn. 1; CX-16. This letter is further evidence that Respondent had actual notice of the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him actual and constructive notice of this proceeding. Respondent has not answered or otherwise responded to the Complaint. By failing to respond, Respondent has defaulted.

II. Jurisdiction

Respondent became registered with FINRA as an Investment Company and Variable Contracts Products Representative on September 25, 2002. He was registered with FINRA member firm Northwestern Mutual Services, Inc., from September 25, 2002, until October 3, 2007. Respondent was registered at another FINRA member firm from December 21, 2007, until June 13, 2008. Respondent is not currently registered or associated with a FINRA member firm. Shu Decl. ¶ 5; CX-1.

Although Respondent is not registered with a FINRA member firm, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the Complaint was filed within two years after the termination of his last registration with a member firm, and it charges him with misconduct while he was registered with a member firm and with failing to respond to requests for information that were issued, pursuant to Procedural Rule 8210, within two years following the termination of his registration with a member firm.

III. Violations

A. Respondent Falsified Documents in Violation of Conduct Rule 2110

Between May 21, 2007, and August 20, 2007, Respondent signed the names of six customers to 17 insurance documents submitted to Northwestern Mutual's insurance affiliate, without the customers' knowledge or approval. Each of the 17 documents contained the falsified signature of one of the six customers. Falsification of documents violates Conduct Rule 2110.³

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent falsified documents, in violation of Conduct Rule 2110.⁴

B. Respondent Made False Statements to His Member Firm in Violation of Rule 2110

Northwestern Mutual conducted an investigation of the falsification of the signatures of its insurance customers. During the investigation, Northwestern Mutual's management asked Respondent whether he had signed six customers' names to the 17 insurance documents. Both in interviews and in signed statements, Respondent repeatedly denied signing the customers' signatures on the documents. Respondent's denials were false, and impeded Northwestern Mutual's internal investigation.

³ See, e.g., *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 – *23 (N.A.C. Feb. 27, 2007) (falsification of documents submitted to state insurance regulators); *Donald M. Bickerstaff*, Exch. Act Rel. No. 35,607, 1995 SEC LEXIS 982, at *7 – *11 (Apr. 17, 1995) (falsification of customer's signature on insurance forms).

⁴ Respondent pled guilty to a misdemeanor criminal charge, described by the Kentucky Department of Financial Institutions as "criminal intent involving forged documents," after being charged with four felony counts of second-degree forgery in a prosecution by the Commonwealth of Kentucky, and agreed to a permanent revocation of his registration as a broker-dealer agent in Kentucky. CX-11. Although the press release does not fully explain the settlement, it appears that Respondent was charged with forgery in the second degree, a felony, but pled guilty to forgery in the third degree, a misdemeanor. Ky. Rev. Stat. §§ 516.040, 516.050.

A registered representative violates Conduct Rule 2110 when he makes misrepresentations to his firm in connection with the firm's investigation of alleged misconduct.⁵ The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent made false statements to his member firm in responding to his firm's inquiries concerning his falsification of documents, in violation of Conduct Rule 2110.

C. Respondent Failed to Respond to Requests for Information in Violation of Procedural Rule 8210 and Conduct Rule 2110

Enforcement requested information concerning the falsification of the signatures of the six customers. Respondent responded to the request. Enforcement subsequently learned of three additional customers whose signatures might have been forged. On August 21, 2008, and October 20, 2008, pursuant to Procedural Rule 8210, Enforcement sent requests for information about the three additional forgeries to Respondent by first-class and certified mail at his CRD address. Respondent did not respond to the requests.

Both requests were served within two years of the termination of Respondent's last registration with a FINRA member firm. Respondent was required to respond to the subsequent requests for information pursuant to Procedural Rule 8210. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210.⁶

⁵ *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 – *10 (N.A.C. May 7, 2003).

⁶ A violation of NASD Rule 8210 is also a violation of NASD Conduct Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

IV. Sanctions

Enforcement seeks a bar for each of the three violations charged. For forgery or falsification of documents, the Sanction Guidelines recommend a bar in egregious cases. *FINRA Sanction Guidelines* at 39 (2007). Respondent's forgery was egregious. He falsified a substantial number of documents over a substantial period of time. The documents involved insurance policies, and Respondent's forgeries could have resulted in injury both to the customers and his member firm's insurance affiliate. Although Respondent claimed to have a good-faith belief that he had implied authority to sign at least some of the documents, there is substantial evidence that he did not, including the six customers' statements and Respondent's plea of guilty to related criminal charges. Respondent profited from his misconduct, receiving commissions of \$8,540 as a result of the falsification of the 17 documents. He repeatedly denied his misconduct to his member firm. A bar is therefore the appropriate sanction.⁷

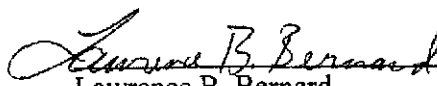
There is no specific Sanction Guideline for making misrepresentations to an associated person's member firm. The nature of Respondent's misrepresentations to his member firm supports a bar. The misrepresentations were intended to impede the firm's investigation into serious misconduct. The misrepresentations could have caused injury to the firm's insurance affiliate if it had relied on Respondent's statements and treated the signatures as authorized. Similarly, the insurance customers could have been injured if the insurance affiliate had taken the position in dealing with its customers that the signatures were authorized. Respondent made numerous misrepresentations to his firm. Under the circumstances of this case, a bar is the appropriate sanction.

⁷ Respondent's firm reimbursed the injured customers for all losses incurred as a result of Respondent's misconduct, and Respondent reimbursed his firm for the payments to customers. Accordingly, restitution is not appropriate in this matter.

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. *FINRA Sanction Guidelines* at 35. Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years. Respondent failed to respond to two requests for information concerning the three additional possible forgeries. There are no mitigating factors that would justify imposition of a lesser sanction. A bar is therefore the appropriate sanction under the facts and circumstances of this case for Respondent's violations of Procedural Rule 8210 and Conduct Rule 2110.

V. Conclusion

Respondent Michael R. Ecton is separately barred from associating with any FINRA member firm in any capacity for each of three violations: falsification of documents in violation of Conduct Rule 2110, making misrepresentations to his member firm in violation of Conduct Rule 2110, and failing to provide information in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Michael R. Ecton (*via overnight courier and first-class mail*)
Pamela Shu, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)