

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

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

EDWARD D. BASHAM
(CRD No. 3218720),

Respondent.

Disciplinary Proceeding
No. 2007011057501

Hearing Officer – RSH

DEFAULT DECISION

May 5, 2009

Respondent was barred from associating with any member firm in any capacity for violating Rules 8210 and 2110 by failing to respond to requests for information. In light of the bar, no additional sanctions were imposed for the Respondent's private securities transaction in violation of Rules 3040 and 2110.

Appearances

Karen E. Whitaker, Regional Counsel, and Andrew A. Favret, Regional Chief Counsel, FINRA, Dallas, TX, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed a Complaint (attached to this Decision as Exhibit A) in this proceeding on December 11, 2008. The Complaint asserted two causes of action against Respondent Edward D. Basham ("Respondent"): participating in a private securities transaction in violation of NASD Conduct Rules 3040 and 2110 and failing to respond to requests for information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Respondent did not answer or otherwise respond to the Complaint. Consequently, on March 12, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Karen E. Whitaker ("Whitaker Decl.") and three exhibits. Respondent did not reply to the motion.¹

I. Respondent's Default

On December 10, 2008, Enforcement mailed the Complaint and First Notice of Complaint to Respondent's last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address"), and to two other addresses ("McCue Rd." and "Fountain Lake," respectively), by first-class and certified mail. Both the first-class and certified mailings sent to Respondent's CRD Address were returned to Enforcement.² The first-class mailing sent to Respondent's McCue Rd. address was not returned, and the certified receipt was returned with the signature of "Ashley Nelson."³ The first-class mailing sent to Respondent's Fountain Lake address was not returned; however, the certified mailing was returned and marked, "Unclaimed."⁴

On January 13, 2009, Enforcement mailed the Complaint and Second Notice of Complaint to Respondent's CRD Address, and to his McCue Rd. and Fountain Lake addresses, by first-class and certified mail.⁵ Both mailings sent to the CRD Address were returned to Enforcement. The certified mailings sent to the McCue Rd. and Fountain Lake addresses were returned to Enforcement marked, "Unclaimed."⁶ The first-class

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

² Whitaker Decl., ¶ 22; CX-2, pgs. 14-15.

³ Whitaker Decl., ¶ 23; CX-2, pg. 16.

⁴ Whitaker Decl., ¶ 24; CX-2, pg. 17.

⁵ Whitaker Decl., ¶ 25; CX-1, pg. 1; CX-3, pg. 1.

⁶ Whitaker Decl., ¶¶ 27, 28; CX-3, pgs. 19, 20.

mailings sent to Respondent's McCue Rd. and Fountain Lake addresses were not returned.⁷ The Second Notice of Complaint stated that Respondent was required to answer the Complaint by January 30, 2009.⁸ To date, Respondent has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.

The Hearing Officer finds that Enforcement properly served Respondent with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in accordance with FINRA Procedural Rule 9134(b)(1), thereby giving him constructive notice of this disciplinary proceeding. By failing to answer the Complaint, Respondent defaulted.⁹ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.¹⁰

II. Jurisdiction

Respondent first became registered with NASD (FINRA's predecessor) as a General Securities Representative in March 1999. After being associated with various member firms, he was employed as a General Securities Representative with member firm WaMu Investments, Inc. ("WaMu") from May 16, 2007, to October 25, 2007.¹¹

⁷ Whitaker Decl., ¶¶ 27, 28.

⁸ CX-3, pg. 2.

⁹ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁰ On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. Pursuant to the consolidation, NASD Rules 9210-9290 were superseded by FINRA Rules 9210-9290. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules. The FINRA Rules are at www.finra.org/Rules.

¹¹ CX-1, pgs. 2, 5.

Although Respondent has not been registered with FINRA since October 25, 2007, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his registration.¹²

III. Violations

A. Participation in a Private Securities Transaction in Violation of Conduct Rules 3040 and 2110

In the First Cause of Action of its Complaint, Enforcement alleged that on or about October 1, 2007, while registered with WaMu, Respondent recommended that DB, a 70 year-old customer, liquidate securities held at WaMu and invest the proceeds of \$300,000 in a Capital Appreciation Bond ("CAB") issued by Life Fund 5.1, LLC. The bond, which is due to mature on January 1, 2012, has a stated annual interest rate of 15% and a maturity amount of \$543,359. The CAB is a security in the form of a promissory note.¹³ Respondent did not provide any notice to WaMu regarding his offer and sale of the CAB to DB.¹⁴ Contained in Enforcement's files are copies of the investment documents for DB and DB's sworn declaration in which he described the facts and circumstances surrounding his investment in the CAB.¹⁵ The Hearing Officer finds that

¹² Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

¹³ *Reves v. Ernst & Young*, 494 U.S. 56, 63-65 (1990).

¹⁴ Whitaker Decl., ¶11.

¹⁵ Whitaker Decl., ¶¶ 9-13.

Respondent's sale of the CAB to DB was outside the scope of Respondent's regular employment with his member firm.

NASD Conduct Rule 3040 (a) provides that "[n]o person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule." Rule 3040 defines a "private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member..." Rule 3040(b) requires the associated person to notify the firm prior to participating in a private securities transaction. Rule 3040 protects investors from unsupervised sales and protects the member firm from liability and loss resulting from those sales. Violation of this rule deprives investors of a member firm's oversight and due diligence, protections they have a right to expect.¹⁶

Enforcement argued that the CAB is a security under the "family resemblance test" established by the Supreme Court in *Reves v. Young*.¹⁷ Under the *Reves* test, a promissory note is presumed to be a security unless: (1) it bears a strong family resemblance to certain notes that are recognized not to be securities; or (2) a four-factor analysis leads to the conclusion that the note is not a security.¹⁸ The burden of rebutting the presumption falls on the Respondent; however, he failed to provide testimony in this matter. Therefore, the CAB is presumed to be a security.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent participated in a private securities

¹⁶ *Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *14 – *15 (Nov. 8, 2006).

¹⁷ *Reves v. Ernst & Young*, 494 U.S. 56, 63-65 (1990).

¹⁸ *Id.* at 66-67.

transaction in violation of NASD Conduct Rule 3040. A violation of Conduct Rule 3040 also constitutes a violation of Conduct Rule 2110.¹⁹

B. Failure to Respond to Requests for Information in Violation of Procedural Rule 8210 and Conduct Rule 2110

The Second Cause of Action alleged that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to two written requests that he appear for testimony concerning his role in DB's investment in the CAB. FINRA Staff ("Staff") sent each request by first-class and certified mail to Respondent at his CRD address as well as the McCue Rd. and Fountain Lake addresses. Although most of the certified mailings were returned undelivered, the receipt for one certified mailing, sent on September 12, 2008, and the receipt for another certified mailing, sent on October 24, 2008, were returned signed by "Randy Krinsley." Most of the mailings sent by first-class mail were not returned to Enforcement.²⁰ To date, Respondent has not responded to the Staff's request for testimony.²¹

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. A violation of Rule 8210 is also a violation of Rule 2110.²²

¹⁹ *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (July 20, 1999); see also *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *11 – *12 (Nov. 8, 2007) (stating that violations of FINRA rules are inconsistent with just and equitable principles of trade and constitute a violation of Rule 2110.).

²⁰ Whitaker Decl., ¶¶ 14-17.

²¹ Whitaker Decl., ¶ 18.

²² *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

IV. Sanctions

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.²³ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.²⁴ For these reasons, FINRA Sanction Guidelines ("Guidelines") recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²⁵ Here, Respondent failed to respond in any manner to two requests that he appear for testimony in connection with DB's investment in the CAB. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

Accordingly, the Hearing Officer finds that Respondent should be barred from associating with any FINRA member in any capacity for violating Rules 8210 and 2110. In light of the bar, no additional sanction is imposed for engaging in a private securities transaction in violation of Rule 3040.

V. Order

Edward D. Basham is barred from associating with any member firm in any capacity for failing to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no additional sanction is imposed for his failure to submit proper notice to his firm of a private securities transaction in violation of Conduct Rules 3040 and 2110.

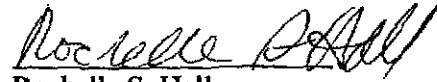
²³ *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000); *Department of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003).

²⁴ *Joseph P. Hannan*, Exchange Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²⁵ *FINRA Sanction Guidelines* at 35.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "Rochelle S. Hall", written in dark ink.

Rochelle S. Hall
Hearing Officer

Copies to:

Edward D. Basham (*via overnight courier and first class mail*)

Karen E. Whitaker 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 (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**EDWARD D. BASHAM
CRD No. 3218720**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2007011057501**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

This matter involves a registered representative who participated in a private securities transaction without providing notice, written or otherwise, to his employer member firm, in violation of NASD Conduct Rules 2110 and 3040. Specifically, on or about October 1, 2007, while registered with WaMu Investments, Inc., Edward D. Basham recommended that a seventy year old customer liquidate securities held at WaMu and invest the proceeds of \$300,000 in a Capital Appreciation Bonds issued by Life Fund 5.1, LLC. Basham also failed to respond to requests to provide sworn testimony regarding the above-described activities, in violation of NASD Rules 2110 and 8210.

JURISDICTION

1. Edward D. Basham entered the securities industry in March 1999, when he associated with a FINRA member firm. He associated with one other member firm before joining WaMu in February 2004. Basham left the firm in June 2005, and subsequently associated with another FINRA member firm in August 2005. He rejoined WaMu in May 2007, and remained there until October 24, 2007. Basham is not currently associated with a FINRA member firm. During his career in the securities industry, Basham obtained Series 7 and 66 securities licenses.
2. FINRA retains jurisdiction to file this complain against Basham pursuant to Article V, Section 4 of the FINRA By-Laws, which provides that FINRA shall retain jurisdiction over a formerly associated person for two years after the effective date of termination of registration. Based on his termination date from WaMu, FINRA retains jurisdiction over Basham until October 23, 2009.

FIRST CAUSE OF ACTION

(Private Securities Transaction - Rules 3040 and 2110)

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. On or about October 1, 2007, while registered with WaMu, Basham caused customer DB to liquidate securities that DB held at WaMu and invest the proceeds of \$300,000 in a *Capital Appreciation Bond* issued by Life Fund 5.1, LLC. The bond has a stated annual interest rate of 15% and a maturity amount of \$543,359. The bond is due to mature on January 1, 2012.

5. The *Capital Appreciation Bond* is a security in the form of a promissory note.
6. Basham did not provide notice, written or otherwise, to WaMu regarding his offer and sale of the *Capital Appreciation Bond* to customer DB.
7. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3040 by Edward D. Basham.

SECOND CAUSE OF ACTION

(Failure to Provide On-The-Record Testimony – Rules 8210 and 2110)

8. The Department realleges and incorporates by reference paragraphs 1-7 above.
9. By letter dated September 12, 2008, FINRA staff requested, pursuant to NASD Rule 8210, that Basham appear at FINRA's Dallas District Office on September 26, 2008, and provide on-the-record testimony regarding the allegations detailed in the first cause of action. The September 12th request letter was sent, via certified and regular mail, to Basham at his CRD home address: [REDACTED]
[REDACTED] ("CRD address") and to three other alternate addresses known to FINRA staff: (1) [REDACTED]
[REDACTED] ("McCue Rd. address"); (2) [REDACTED]
[REDACTED] ("Turtlewood Court, [REDACTED] address"); and (3) [REDACTED]
[REDACTED] ("Fountain Lake address").
10. The certified mailing sent to Basham at his CRD address was returned to the district office on October 20, 2008, marked "Return To Sender," "Unclaimed" and "Unable To Forward." The mailing also reflected yet another alternate address for Basham: [REDACTED]

("Turtlewood Court, [REDACTED] address"). The regular mailing sent to Basham at his CRD address was not returned to the district office. The certified receipt card for the September 12th mailing to the McCue Rd. address was returned to the district office on September 19, 2008, signed by "Randy Krinsley." The regular mailing was not returned to the district office. The certified receipt card for the September 12th mailing to the Turtlewood Court, [REDACTED] address was returned to the district office on October 20, 2008, marked "Return To Sender," "Unclaimed" and "Unable To Forward." The regular mailing was not returned to the district office. The certified mailing sent to Basham at the Fountain Lake address was returned to the district office on October 13, 2008, marked, "Return To Sender," "Unclaimed" and "Unable to Forward." The regular mailing was not returned.

11. By letter dated October 24, 2008, FINRA again requested, pursuant to NASD Rule 8210, that Basham appear at the district office and provide testimony on November 7, 2008. The request letter was sent, via certified and regular mail, to Basham at his CRD address as well as to each of the four alternate addresses known to FINRA staff. Both the certified and regular mailings sent to Basham at his CRD address were returned to the district office on Nov. 3, 2008. Both letters were marked "Forward Time Exp" and "Rtn To Send," and reflected the Fountain Lake address as Basham's forwarding address.
12. The certified receipt card for the mailing to the McCue Rd. address was returned on October 30, 2008, signed by "Randy Krinsley." The regular mailing was not returned. Neither the certified letter nor the receipt card for the mailing sent to Basham at the Turtlewood Court, [REDACTED] address has been returned to the district

office. The regular mailing was returned on Nov. 3, 2008, marked "Forward Time Exp" and "Rtn To Send," and reflected the Fountain Lake address as Basham's forwarding address. None of the mailings sent to Basham at the Fountain Lake address has been returned to the district office. The certified and regular mailings sent to Basham at the Turtlewood Court, [REDACTED] address were both returned to the district office on October 27, 2008. Both letters were marked "Forward Time Exp" and "Rtn To Send," and reflected the Fountain Lake address as Basham's forwarding address.

13. To date, Basham has not appeared and provided the requested testimony.
14. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Edward D. Basham.

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.
- 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: December 10, 2008



Karen E. Whitaker, Senior Regional Counsel
Andrew A. Favret, Associate Vice President and
Regional Chief Counsel

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