

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

OSCAR G. GRADOS
(CRD No.4600863),

Respondent.

Disciplinary Proceeding
No. 20070113159-01

Hearing Officer – RSH

DEFAULT DECISION

April 6, 2010

Respondent is barred from associating with any member firm in any capacity for making unsuitable recommendations, in violation of NASD Conduct Rules 2310(a) and 2110 and IM-2310-2.

Appearances

John S. Han, Senior Regional Counsel and Jacqueline D. Whelan, Regional Chief Counsel, San Francisco, CA, for the Department of Enforcement.

No appearance by or on behalf of Oscar G. Grados.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Oscar G. Grados after Grados' member firm filed a Uniform Termination Notice for Industry Registration ("Form U5") stating that the firm had terminated Grados for "recommending that clients borrow against the equity in their homes and invest the loan proceeds in mutual funds."

In its Complaint, Enforcement charged Grados with violating NASD Conduct Rules 2310(a) and 2110 and Membership and Registration Rule Interpretive Material

("IM")-2310-2 by making the unsuitable recommendations to customers, as described in the Form U5.¹

Enforcement filed the Complaint with the Office of Hearing Officers on November 16, 2009. Grados did not answer or otherwise respond to the Complaint. Consequently, on February 9, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of John S. Han and five exhibits. Grados did not reply to the motion.²

II. Jurisdiction

Grados was registered as a General Securities Representative with FINRA member firm Edward Jones from April 18, 2005, through October 29, 2007. From November 19, 2007, through December 18, 2007, Grados was registered with another FINRA member. Grados has not been associated with a FINRA member firm since December 18, 2007.³

Although Grados is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint (1) was filed within two years following his last registration with a FINRA member firm and (2) charges him with misconduct that occurred while he was registered with a FINRA member.⁴

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. *See*, Regulatory Notice 08-57. NASD Rule 2310 and IM-2310 have not been converted to FINRA rules and are still in effect. They are available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "NASD Rules"). Rule 2110 has been renumbered as FINRA Rule 2010, which is substantially identical to Rule 2110.

² 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.

³ Enforcement Exhibit ("CX")-1 at p. 3; Han Decl., ¶ 7.

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

III. Respondent's Default

On November 16, 2009, Enforcement sent the Notice of Complaint and Complaint to Grados by first-class certified mail to his residential address as recorded in FINRA's Central Registration Depository ("CRD Address").⁵ The mailing was returned to Enforcement stamped, "Unclaimed."⁶

On December 17, 2009, Enforcement sent the Second Notice of Complaint and Complaint to Grados by first-class certified mail to his CRD Address. The mailing was returned to Enforcement stamped, "Unclaimed."⁷ Enforcement has no knowledge of a more current address for Grados than the CRD Address.⁸ The Hearing Officer finds that Enforcement served Grados in accordance with Rule 9134.

To date, Grados has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.⁹ By failing to answer the Complaint, Grados defaulted.¹⁰ 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.

IV. Violation

Unsuitable Recommendations

The Complaint alleges Grados violated NASD Conduct Rules 2310(a) and 2110 and IM-2310-2 by making unsuitable recommendations. According to the Complaint, between October 2005, and February 2007, Grados recommended to 13 customers that

⁵ CX-3; Han Decl., ¶ 10.

⁶ CX-4; Han Decl., ¶ 11.

⁷ CX-5; Han Decl., ¶¶ 13-14.

⁸ Han Decl., ¶ 16.

⁹ Han Decl., ¶ 15.

¹⁰ *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)).

they obtain home equity loans and deposit the proceeds in their securities accounts at Edward Jones. He recommended that the customers use the loan proceeds to purchase mutual funds. Grados then arranged for a portion of each customer's mutual fund investment to be liquidated each month in an amount equal to the customer's home equity loan payment. The money was then transferred from the customer's Edward Jones account to the customer's bank account, from which the loan payment would be made.

The Complaint further alleges that Grados recommended these transactions knowing that none of the customers was financially capable of purchasing the recommended mutual funds without resorting to a home equity loan. Grados also knew or should have known that the customers would have to rely substantially on the mutual fund returns to make their required home equity loan payments, and that should those returns decline to the point of impairing their ability to make the payments, they were at risk of losing their homes.

In support of the allegations in the Complaint, Enforcement states that its records include monthly account statements for each customer described in the Complaint, their new account forms, and the transcript of Grados' on-the-record testimony ("OTR"). In his OTR, Grados testified that he knew none of the customers described in the Complaint could afford to purchase the mutual funds without taking out home equity loans. He nevertheless recommended that they use the loan proceeds to purchase mutual funds because, based on the historical performance of the funds, the customers could expect that the returns on their investments would exceed the amount of interest they would pay on their loans.¹¹

¹¹ Han Decl., ¶¶ 19-22.

In recommending to a customer the purchase, sale or exchange of any security, NASD Conduct Rule 2310(a) requires a registered person to have reasonable grounds for believing that the recommendation is suitable, based on the facts disclosed by the customer about his other security holdings, financial situation and needs. Further, IM-2310-2(b)(5) states that “recommending the purchase of securities...in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment” violates the registered person’s obligation under Conduct Rule 2110 to “observe high standards of commercial honor and just and equitable principles of trade.”

The facts alleged in the Complaint establish that Grados made unsuitable recommendations to 13 customers, and thereby violated NASD Conduct Rules 2310(a) and 2110 and IM-2310-2.

V. Sanctions

The FINRA Sanction Guidelines for unsuitable recommendations provide for a suspension of ten business days to one year, and, in egregious cases, for a longer suspension or a bar.¹² 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. Grados admitted that he knew his customers could not afford the mutual funds he was recommending unless they took out home equity loans. By recommending such a strategy, he placed each of his customers at significant risk of losing their homes. FINRA has long recognized that homes occupy a

¹² FINRA Sanction Guidelines 99 (2007), *available at* www.finra.org/sanctionguidelines.

special status among investors' assets because "a home is a basic necessity" and "homeownership...provides stability and plays an enormous part in many social policies."¹³ In addition, Grados' violative conduct spanned more than 16 months and involved 13 customer accounts. His misconduct resulted in \$12,345.42 in commissions to him from his customers' purchases of the funds he recommended. The record contains no evidence of mitigating factors. Accordingly, the Hearing Officer will bar Grados for his violation of the suitability rule.

VI. Order

For making unsuitable recommendations to customers, in violation of NASD Conduct Rules 2310(a) and 2110 and IM-2310-2, Grados is barred from associating in any capacity with any FINRA member. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Oscar G. Grados (*via overnight courier and first-class mail*)
John S. Han, Esq. (*via electronic and first-class mail*)
Mark Dauer, Esq. (*via electronic mail*)
David Sonnenberg, Esq. (*via electronic mail*)

¹³ Notice to Members 04-89, 2004 NASD LEXIS 76, at *4 (Dec. 2004).

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Oscar G. Grados (CRD No. 4600863),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007011315901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent recommended to 13 customers that they obtain home equity loans and use the proceeds to purchase mutual funds. Based on each customer's financial circumstances, Respondent's recommendation to each customer was unsuitable.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in November 2002 by filing a Form U4 to become associated with FINRA member Edward Jones. He became registered as a General Securities Representative in January 2003. The firm terminated Respondent on or about October 29, 2007.
3. Respondent has not been associated with any FINRA member since on or about December 18, 2007.
4. On or about June 4, 2008, Edward Jones updated Respondent's Uniform Termination Notice for Securities Industry Registration to report a customer complaint and

settlement. Pursuant to Article V, Section 4(a)(i) of the FINRA By-Laws, Respondent remains subject to the filing of this Complaint.

CAUSE OF ACTION
Unsuitable Recommendations (Rules 2310(a) and 2110 and IM-2310-2)

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. From on or about October 13, 2005, through February 23, 2007, Respondent recommended to 13 customers that they obtain home equity loans and deposit the proceeds in their securities accounts at Edward Jones.
7. Respondent then recommended that the customers use the loan proceeds to purchase mutual funds.
8. With respect to each customer, Respondent arranged a monthly transfer from the customer account to a bank account controlled by the customer, from which the customer would make his or her monthly loan payment.
9. The table below summarizes the above-described transactions:

Customer	Annual Income	Net Worth	Amount Deposited	Date of Investment	Investment Amount	Monthly Transfer
L.O.	\$30,000	\$150,000	\$73,187.00	10/13/05	\$73,170.00	\$1,079.98
J.T.	\$18,000	\$360,000	\$89,000.00	10/26/05	\$88,999.00	\$1,250.77
M.C.	\$40,000	\$150,000	\$50,000.00	11/04/05	\$50,000.00	\$596.37
S.B. & L.V.H.	\$27,000	\$60,000	\$20,000.00	12/30/05	\$20,000.00	\$350.67
V.F.	\$50,000	\$200,000	\$100,000.00	12/30/05	\$100,000.00	\$1,152.87
C.W.	\$45,000	\$120,000	\$54,996.13	01/11/06	\$54,996.00	\$571.42
L.R.	\$30,000	\$125,000	\$60,000.00	02/01/06	\$60,000.00	\$450.00
S.H. & J.H.	\$40,000	\$341,000	\$125,000.00	02/24/06	\$125,000.00	\$1,105.18
A.C.	\$50,000	\$90,000	\$67,932.00	03/22/06	\$67,930.00	\$1,231.96
V.T.	\$59,000	\$150,000	\$66,000.00	05/23/06	\$66,000.00	\$868.70
M.B. & S.B.	\$48,000	\$150,000	\$80,000.00	05/25/06	\$76,000.00	\$780.45
J.G.S. & C.M.	\$48,000	\$100,000	\$29,000.00	12/18/06	\$30,065.00	\$792.17
E.T. & W.T.	\$85,000	\$80,000	\$118,330.00	02/23/07	\$118,329.00	\$1,113.13

10. Respondent recommended these transactions knowing that none of the customers was financially capable of purchasing the recommended mutual funds without resorting to a home equity loan.
11. Respondent also knew or should have known that the customers would rely substantially upon the mutual fund returns to make the required home equity loan payments and, should those returns decline to the point of impairing their ability to make the payments, were at risk of losing their homes.
12. By recommending that his customers obtain home equity loans to purchase securities that they could not otherwise afford and incur obligations that placed their homes at risk, Respondent violated NASD Rules 2310(a) and 2110 and IM-2310-2.

RELIEF REQUESTED

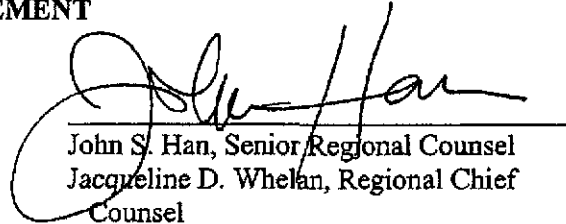
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains.

- 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: November 16, 2009



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

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