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REGISTRATION & DISCLOSURE

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

THOMAS JOSEPH DOWNS (CRD No.
4297709),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2007011819401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On August 2, 2007, Downs entered an unauthorized transaction in the account of customer RS. Downs has also failed to respond to FINRA staff's written requests for information. This conduct violated NASD Conduct Rule 2110, IM-2310-2 and Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. On November 3, 2000, Downs first became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) through a member firm as a General Securities Representative (Series 7). From February 2005 to August 17, 2007, he was registered in that same capacity with Westrock Advisors, Inc.

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3. Downs has not been associated with a member firm since August 17, 2007.

Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Downs for the purposes of this Complaint in that the misconduct alleged in the First Cause of Action occurred while he was associated with a member firm and the misconduct alleged in the Second Cause of Action, and the filing of this Complaint, occurred within two years of Downs' last association with a member firm.

FIRST CAUSE OF ACTION

Unauthorized Trade (NASD Conduct Rule 2110 and IM-2310-2)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. On August 2, 2007, Downs effected an unauthorized transaction in customer RS's account [REDACTED] by purchasing 10,000 shares of the common stock of Cryocor Inc. at \$5.25 per share for a total of \$52,518.98.
6. RS had not given Downs discretionary authorization over his account to purchase securities, nor had he given any person a power of attorney to act on his behalf with respect to the account or to his financial affairs. RS, however, had given Downs discretionary authority to sell securities in his account under certain circumstances.
7. On August 15, 2007, Downs sold the 10,000 shares of Cryocor Inc. at \$3.47 per share for \$34,567.42.
8. RS lost \$18,651.56 from the purchase and sale of the Cryocor Inc. stock while Downs earned \$420 in net commissions.

9. By entering the unauthorized purchase transaction in RS's account, Downs violated NASD Conduct Rule 2110 and IM-2310-2.

SECOND CAUSE OF ACTION

Failure to Respond to Written Requests
(NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

10. The Department realleges and incorporates by reference paragraphs 1-9 above.
11. On January 11, 2008 and pursuant to NASD Procedural Rule 8210, FINRA staff (staff) sent a letter to Downs requesting information concerning his August 2, 2007 purchase of Cryocor Inc. shares in customer RS's account (the First Request). The letter requested a written response by January 25, 2008.
12. ~~The First Request was sent by first-class and certified mail to Downs' residential~~ address as reflected in the records of the Central Registration Depository (CRD), [REDACTED] (the CRD address).
- The first-class mail envelope sent to Downs was not returned. The certified mail envelope sent to Downs was returned to staff January 23, 2008 and the post office markings indicated a possible alternative address: "Forward Time Exp RTN To Send Downs [REDACTED]"
13. Downs failed to respond to First Request.
14. On January 23, 2008 and pursuant to NASD Procedural Rule 8210, staff sent a second letter to Downs requesting the same information (the Second Request) and that he respond in writing to staff's written request by February 6, 2008.
15. The Second Request was sent by first-class and certified mail to Downs' possible alternative address of [REDACTED] (the Viewpoint Terrace address). The first-class envelope was not returned. The

certified Domestic Return Receipt was returned to staff on January 30, 2008 and indicated that a "Thomas Downs" signed for the envelope on January 28, 2008.

16. Downs failed to respond to the Second Request.
17. On February 7, 2008 and pursuant to NASD Procedural Rule 8210, staff sent a third letter to Downs requesting the same information (the Third Request) and that he respond in writing to staff's written request by February 21, 2008. In the letter, Downs was informed that this was a final request and his failure to respond may subject him to disciplinary action.
18. The Third Request was sent by first-class and certified mail to Downs' CRD and Viewpoint Terrace addresses. The first-class envelope to the CRD address was returned on February 15, 2008 and marked "Return To Sender Not Deliverable As Addressed Unable To Forward." The certified envelope to the CRD address was returned on February 25, 2008 and marked "Return To Sender Not Deliverable As Addressed Unable To Forward." The first-class envelope to the Viewpoint Terrace address was not returned. The certified Domestic Return Receipt to the Viewpoint Terrace address was returned to staff on February 13, 2008 and indicated an individual with the initials "TD" signed for the envelope on February 10, 2008.
19. Downs has failed to the First, Second and Third requests for information.
20. The staff is not aware of a more current residential address or of a business address for Downs.
21. By failing to respond to staff's written requests, Downs 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 NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: December 1, 2008


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