

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

Department of Enforcement,

Complainant,

v.

Thomas Joseph Downs,
(CRD No. 4297709),

Respondent.

Disciplinary Proceeding
No. 2007011819401

Hearing Officer SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 29, 2009

INTRODUCTION

Disciplinary Proceeding No. 2007011819401 was filed on December 1, 2008, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant).

Respondent Thomas Joseph Downs submitted an Offer of Settlement (Offer) to Complainant on January 27, 2009. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of

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findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

On November 3, 2000, Downs first became registered with FINRA 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.

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

On March 10, 2006, NASD issued an AWC (E9B2004043401) against Downs finding that he had effected two unauthorized trades in two separate customer accounts. Downs was suspended for 20 business days, fined \$5,000 and ordered to pay \$3,900 in restitution.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

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

1. 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.
2. 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.

3. On August 15, 2007, Downs sold the 10,000 shares of Cryocor Inc. at \$3.47 per share for \$34,567.42.
4. RS lost \$18,651.56 from the purchase and sale of the Cryocor Inc. stock while Downs earned \$420 in net commissions.

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

5. 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.
6. 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] [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: [REDACTED]
[REDACTED]
7. Downs failed to respond to First Request.
8. 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.
9. 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.

10. Downs failed to respond to the Second Request.
11. 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.
12. 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.
13. Downs has failed to the First, Second and Third requests for information.
14. The staff is not aware of a more current residential address or of a business address for Downs.

Based on the foregoing, Respondent violated NASD Conduct Rule 2110, IM-2310-2 and NASD Procedural Rule 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred from association with any FINRA member in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



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