

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALAN G. MEISTER
(CRD No. 4354400),

Respondent.

Disciplinary Proceeding
No. 2007011919001

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

July 14, 2010

Respondent is suspended from associating with any FINRA registered firm in any capacity for 15 months and fined \$20,000 for: (1) participating in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110; (2) failing to disclose material facts in connection with the sale of securities, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110; and (3) making unsuitable recommendations to a customer, in violation of NASD Conduct Rules 2310 and 2110. In addition, Respondent is ordered to requalify by examination before he re-enters the securities industry.

Appearances

Laura Leigh Blackston, Senior Regional Counsel, New Orleans, LA, for the Department of Enforcement.

No appearance by or on behalf of Alan G. Meister.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Amended Complaint with the Office of Hearing Officers on December 1, 2009.¹ The Complaint charges Respondent Alan G. Meister (“Meister”) with: (1) participating in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110; (2) failing to disclose material facts in connection with the sale of securities, in violation of Section 10(b) of the Securities and Exchange Act of 1934 (“Exchange Act”), SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110; and (3) making unsuitable recommendations to a customer, in violation of NASD Conduct Rules 2310 and 2110.²

Meister did not answer the Amended Complaint. Accordingly, on February 18, 2010, Enforcement filed a Motion for Entry of Default Decision, together with the declaration of Laura Leigh Blackston (“Blackston Decl.”) and nine exhibits. For the reasons set forth below, the Hearing Officer found Meister in default and granted Enforcement’s Motion for Entry of Default Decision.

II. Procedural History

On November 30, 2009, Enforcement served the Amended Complaint and First Notice of Complaint on Meister by certified first-class mail sent to his most current residential address

¹ Enforcement filed the original Complaint with the Office of Hearing Officers on November 25, 2009. Enforcement amended the Complaint to correct a reference to a rule citation. (Blackston Decl. at 10, n. 1)

² Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. The applicable rules are available at www.finra.org/rules.

recorded in the Central Registration Depository (“CRD”).³ The United States Postal Service returned the certified mailing to Enforcement with the notation, “Unclaimed.”⁴

On December 29, 2009, Enforcement sent Meisner the Second Notice of Amended Complaint by certified first-class mail at his CRD address.⁵ Once again, the United States Postal Service returned the certified mailing to Enforcement with the notation, “Unclaimed.”⁶ To date, Meister has not filed an answer with the Office of Hearing Officers.

On January 19, 2010, the Office of Hearing Officers issued an order setting a deadline for Enforcement to file a motion for entry of a default decision. Enforcement filed the Motion for Entry of Default Decision on February 18, 2010. Enforcement served the motion on Meister at his CRD address.

Meister did not file a response to the motion for entry of a default decision. However, on March 3, 2010, Enforcement submitted a letter it received that day from Meister in which he indicates that he received the motion at his home on or about February 28, 2010. In summary, Meister states his belief that the default motion is factually inaccurate. Meister concludes, “I would respectfully request that you have someone else review this case, and if necessary, I am personally willing to appear before you again to discuss things.”

In light of Meister’s response letter, the Hearing Officer determined to hold a pre-hearing conference to clarify his position. The Hearing Officer conducted the conference on May 5, 2010. During the conference, the Hearing Officer heard argument from both parties on whether entry of a default decision was appropriate. On May 13, 2010, the Hearing Officer

³ Blackston Decl. ¶ 30.

⁴ *Id.* ¶ 31.

⁵ *Id.* ¶ 34.

⁶ *Id.* ¶ 35.

issued an order denying Enforcement's Motion for Entry of a Default Decision and ordering Meister to file an Answer with the Office of Hearing Officers on or before May 27, 2010, which Meister failed to do. Accordingly, on June 2, 2010, the Hearing Officer issued an order finding Meister in default and granting him until June 16, 2010, to respond further to Enforcement's Motion for Entry of Default Decision. Meister did not file anything further. Accordingly, based on his default, the Hearing Officer will deem the allegations in the Amended Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Background

Meister entered the securities industry in February 2001 and became registered as a General Securities Representative with Edward Jones, a FINRA registered firm, in April 2001.⁷ He was associated with Edward Jones until December 3, 2007, at which time the firm discharged him for engaging in undisclosed outside business activities and soliciting a customer to invest in one of the undisclosed outside businesses.⁸ Edward Jones filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA on Meister's behalf and FINRA terminated his registration on December 19, 2007.⁹ FINRA staff commenced the investigation that led to this proceeding after it received the Form U5.

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) Enforcement filed the Original Complaint within two years after December 19, 2007, the date FINRA terminated Meister's registration, and (2) the

⁷ DX-1, at 2.

⁸ DX-1, at 2.

⁹ DX-2.

Complaint charges him with misconduct that occurred while he was associated with a FINRA registered firm.¹⁰

C. Private Securities Transactions

The First Cause of Action alleges that Meister engaged in private securities transactions by selling shares of ACE Enterprise of Augusta Georgia, Inc. (“ACE Enterprise”) to customer DD on November 2, 2006, and February 13, 2007, without first providing Edward Jones with notice of his planned participation in those sales. Customer DD purchased the shares of ACE Enterprise for \$18,000.

In addition, the evidence shows that Meister admitted during an on-the-record interview conducted by FINRA staff that he presented ACE Enterprise to customer DD as an investment opportunity and then sold DD shares in the company without Edward Jones’ approval.¹¹

The Hearing Officer finds that Meister violated NASD Conduct Rules 3040 and 2110. NASD Rule 3040 provides, in pertinent part, “[p]rior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person’s proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction” Meister failed to provide Edward Jones with the required notice. In addition, a violation of Conduct Rule 3040 is a violation of Conduct Rule 2110.¹²

¹⁰ 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”).

¹¹ Blackston Decl. ¶ 12(h).

¹² *Department of Enforcement v. Frankfort*, No. C02040032, 2007 NASD Discip. LEXIS 16, at *39 n.25 (NASD NAC May 24, 2007) (citation omitted).

D. Material Omission of Facts

The Second Cause of Action alleges that Meister omitted material information in connection with the sale of shares of ACE Enterprise to Customer DD on November 2, 2006, and February 13, 2007. Specifically, Meister failed to inform Customer DD that: (1) ACE Enterprise intended to use the funds she invested to purchase a company called Common Threads, Inc. (“Common Threads”); (2) Meister had loaned Common Threads and its owners \$15,000, or more; and (3) Common Threads had defaulted on the loan.¹³

*In reliance on Meister’s recommendation and representations, Customer DD invested \$18,000 in ACE Enterprise — \$15,000 on November 2, 2006, and \$3,000 on February 13, 2007.*¹⁴ In return for her investment, Meister provided her with a subscription agreement reflecting payment of \$500 and her receipt of 500 shares of ACE Enterprise stock. Meister never delivered a stock certificate or a receipt for the full amount of her investment.¹⁵

Customer DD complained to Edward Jones after ACE Enterprise ceased operations and liquidated its assets. Edward Jones paid Customer DD \$8,130 in settlement of her complaint. Customer DD also received \$9,871.15 from the liquidation of ACE Enterprise’s assets and four dividend payments.

The Hearing Officer finds that Meister violated Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110 because he failed to disclose material information to Customer DD in connection with her investment in ACE Enterprise and he omitted the information with an intent to deceive or defraud Customer DD.

¹³ Compl. ¶ 8.

¹⁴ Blackston Decl. ¶¶ 17(b), 17(c).

¹⁵ *Id.* ¶ 17(d).

E. Unsuitable Recommendations

The Third Cause of Action alleges that Meister's recommendations to Customer DD to invest in ACE Enterprise were unsuitable. At the time, Customer DD was 61 years of age and disabled. Her liquid net worth was \$200,000, and her income was \$20,000 per year from social security disability payments, plus earnings on her investments. Customer DD was unable to work due to her disability. Meister nonetheless advised Customer DD to invest in ACE Enterprise, which Meister knew was financially distressed when he made his recommendations. Meister also knew at the time he recommended the investment in ACE Enterprise that the company would document the investment in an irregular and ambiguous manner. As a result, Meister knew that the investment would be illiquid and risky.

The Hearing Officer finds that Meister violated NASD Conduct Rules 2310 and 2110 because his recommendations were not suitable for Customer DD given her financial situation and investment needs.

IV. Sanctions

A. Private Securities Transactions

The FINRA Sanction Guidelines ("Sanction Guidelines") for selling away (private securities transactions) provides that the first step in determining sanctions is to assess the quantitative extent of the activity.¹⁶ The Sanction Guidelines recommend a suspension of ten business days to three months and a fine of between \$5,000 and \$50,000 where the transactions totaled up to \$100,000. The Sanction Guidelines also include a number of specific considerations in addition to the Principal Considerations in Determining Sanctions applicable in all cases. Relevant considerations include the facts that Meister had a financial interest in the transaction

¹⁶ FINRA SANCTION GUIDELINES 15 (2007), www.finra.org/sanctionguidelines.

and he made it appear that Edward Jones sanctioned the activity. Meister allowed ACE Enterprise to hold business meetings at Edward Jones' office. In addition, Meister concealed his activities from Edward Jones. He submitted a false annual compliance questionnaire to Edward Jones one day after Customer DD's second investment in ACE Enterprise, denying that he was engaged in such activities.

The Hearing Officer finds Meister's violation to be serious and deserving of correspondingly serious sanctions. Accordingly, the Hearing Officer finds that the appropriate sanction for Meister's participation in private securities transactions is a suspension from associating with any FINRA registered firm in any capacity for a period of two months and a fine of \$18,000.

B. Material Omissions in Connection with the Sale of Securities

The Sanction Guidelines for Misrepresentations or Material Omissions of Fact in violation of the securities anti-fraud rules recommend a suspension in all capacities for ten business days to two years and a fine of between \$10,000 and \$100,000.¹⁷

The Hearing Officer finds that Meister's misconduct was serious and there are no mitigating factors. Meister took advantage of Customer DD to benefit himself and his wife who were investors in Common Threads, the company ACE Enterprise was to acquire. At the time Meister recommended that Customer DD invest \$15,000 in ACE Enterprise, Common Threads had defaulted on its loan obligations to Meister and his wife. The evidence strongly supports the conclusion that Meister intentionally deceived Customer DD by withholding the full facts and circumstances surrounding his involvement with the companies, ACE Enterprise's financial instability, and the illiquid and risky nature of the recommended investment. Accordingly, the

¹⁷ SANCTION GUIDELINES 93.

Hearing Officer finds that the appropriate sanction is a suspension of one year from associating with any FINRA registered firm in any capacity and a fine of \$20,000 for his willful violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

C. Unsuitable Recommendations

The Sanction Guidelines for making unsuitable recommendations suggest a suspension in any or all capacities for a period of ten business days to one year and a fine of between \$2,500 and \$75,000.¹⁸ In egregious cases, the Sanction Guidelines recommend a suspension of up to two years, or a bar.¹⁹

In determining the appropriate sanctions for this violation, the Hearing Officer considered the Principal Considerations in Determining Sanctions, which include the number of customers, the duration of the misconduct, evidence of customer harm, and whether the respondent gained or stood to gain financially from his misconduct.²⁰ Taking those factors into consideration, the Hearing Officer determined that the appropriate sanction is a suspension of four months from associating with any FINRA registered firm in any capacity and a \$10,000 fine for Meister's unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110.

D. Conclusion

Finally, the Hearing Officer took into consideration that all of the violations arose from a common course of conduct — the recommendation and sale of ACE Enterprise securities to Customer DD. Accordingly, the Hearing Officer will suspend Meister from associating with any FINRA registered firm in any capacity for 15 months and fine him \$20,000, as a unitary sanction

¹⁸ *Id.* 99.

¹⁹ *Id.*

²⁰ SANCTION GUIDELINES 6-7.

for the foregoing violations. In addition, the Hearing Officer will enter an order requiring that he re-qualify by examination before re-entering the securities industry.

V. Order

Adam G. Meister is suspended from associating with any FINRA registered firm in any capacity for 15 months and fined \$20,000 for: (1) participating in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110; (2) failing to disclose material facts in connection with the sale of securities, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110; and (3) making unsuitable recommendations to a customer, in violation of NASD Conduct Rules 2310 and 2110. In addition, Meister is ordered to requalify by examination before he re-enters the securities industry.

If this Default Decision becomes FINRA's final disciplinary action in this proceeding, the suspension shall commence on August 16, 2010, and end on November 15, 2011. The fine shall be due and payable when and if he seeks to re-enter the securities industry.

A handwritten signature in black ink, appearing to read 'A. Perkins', is written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Adam G. Meister (*via electronic and first-class mail*)
Laura Leigh Blackston, Esq. (*via electronic and first-class mail*)
Andrew A. Favret, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)