

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DOUGLAS R. SMITH
(CRD No. 1845966),

Respondent.

Disciplinary Proceeding

No. 2008012211601

Hearing Officer – Maureen A. Delaney

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 19, 2010

INTRODUCTION

Disciplinary Proceeding No. 2008012211601 was filed on August 3, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Douglas R. Smith (Respondent or Smith) submitted an Offer of Settlement (Offer) dated January 12, 2010, which was received by Complainant on February 17, 2010. 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 findings and violations consistent with the allegations of the Complaint, and to the imposition of

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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

Douglas R. Smith first became registered with FINRA as a Direct Participation Programs Representative (DR) in 1989, an Investment Company Products and Variable Contracts Representative in 1990, a General Securities Representative (GSR) in 1992, and a General Securities Principal (GSP) in 2005. From October 31, 2005 through January 25, 2008, Smith was registered with FINRA through Independent Financial Group, LLC (the Firm) as a GSR and GSP, and as a DR, from November 11, 2005 through January 25, 2008. From December 16, 2008 through on or about April 30, 2009, Smith was registered as a GSR, GSP and DR through another member firm. Since his termination on April 30, 2009, Smith has not been associated with a member firm.

Pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over Smith by filing this complaint within two years of the effective date of his termination from the Firm, on January 25, 2008, and based on conduct that commenced prior to the termination.

FINDINGS AND CONCLUSIONS

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

GENERAL ALLEGATIONS

In September 2003, while Smith was the broker of record for customer PD's IRA account at a member firm, Smith sold PD a variable annuity for his account. On or about September 12, 2003, PD contributed a premium payment towards the variable annuity investment in the amount of \$115,000.00.

In October 2005, Smith became associated with the Firm. Subsequently, in November 2005, PD transferred his IRA account to the Firm, with Smith acting as the broker for his account and PD's variable annuity investment.

On or about May 17, 2006, PD contributed another premium payment towards the variable annuity investment in the amount of \$104,000.00.

As of December 2007, the total amount of premiums PD had contributed to his variable annuity was \$219,000.00.

On or about December 10, 2007, without PD's knowledge, authorization and consent, Smith completed, or caused to be completed, documents to surrender and liquidate PD's variable annuity and to use the proceeds to purchase a variable annuity issued by another insurance company.

In connection with these unauthorized transactions, Smith, without PD's knowledge, authorization and consent, affixed or caused to be affixed PD's signature and/or initials on the following documents: i) an annuity application form used to apply for the new variable annuity contract; ii) an IRA, 403(b) Direct Rollover form used to liquidate PD's variable annuity and transfer the proceeds to a variable annuity contract in an IRA account with another company; iii) a form used to select the sub-account to allocate PD's funds under the new variable annuity contract; iv) a form for California residents age 60 or older which provided notice to the customers purchasing variable annuity contracts about the 30-day period within which a customer could return the policy, as well as other information, including options for investing their purchase payment during this 30-day period; and v) a form which provided notice to the applicant regarding the replacement of a life insurance policy or annuity and which stated that the

applicant should make sure they understand the facts, including a careful comparison of existing benefits and proposed benefits.

In affixing or causing to be affixed PD's signature on the IRA, 403(b) Direct Rollover form as described above, Smith stamped the document with the Firm's medallion signature guarantee stamp and placed his signature on the stamp signature line. This had the effect of, among other things, guaranteeing that PD's signature was genuine.

Smith, without the knowledge, authorization and consent of PD, submitted or caused to be submitted the documents described above, to surrender and liquidate the original variable annuity and to purchase another variable annuity.

On or about December 13, 2007, PD's variable annuity, initially purchased in September 2003, was redeemed at a value of \$292,121.68. PD was assessed a surrender charge in the amount of \$5,200.00 and an annual fee in the amount of \$363.33, and the net proceeds of \$286,558.35 were directed to the insurance company issuing the new variable annuity.

On or about December 17, 2007, the insurance company issued a new variable annuity contract for PD's IRA account in the amount of \$286,558.35.

On or about December 20, 2007, the insurance company mailed the new variable annuity contract and other documents to Smith's office address in Westlake Village, California.

On or about December 24, 2007, PD first became aware of the unauthorized transactions effected in his account by Smith, when he received correspondence from the insurance company notifying him that his original variable annuity had been surrendered and replaced by a contract issued by another insurance company. The insurance company issuing the new variable annuity contract also sent PD correspondence regarding the replacement variable annuity contract. PD subsequently contacted both insurance companies to determine the location of his funds.

Between January 2, 2008 and January 4, 2008, PD had discussions with the insurance company issuing the new variable annuity wherein he notified personnel that: i) he was unaware of the transactions to surrender his variable annuity and replace it with another variable annuity; ii) he did not authorize the transactions; iii) he did not sign the documents authorizing the exchange and the signatures on the paperwork were forgeries, including the document where his signature was guaranteed; and iv) he wanted the transactions reversed.

On or about January 4, 2008, the insurance company issuing the replacement variable annuity contract sent two letters: (i) one letter was sent to PD which acknowledged his complaint and the allegations that he neither authorized nor signed documents to surrender his variable annuity and replace it with a new variable annuity issued by another company and the letter provided instructions on how PD could comply with the company's investigation into the matter; and (ii) one letter was sent to Smith which requested he to respond to PD's allegations that the variable annuity exchange was done without PD's knowledge and authorization, and that PD did not sign the documents to authorize the transactions.

On or about January 7, 2008, compliance staff at Smith's firm first became aware of PD's complaint and allegations against Smith from personnel at the insurance company responsible for issuing the new variable annuity contract.

After the Firm had been notified of PD's complaint on or about January 7, 2008, Smith contacted his supervisor at the Firm and informed her that he had signed PD's signature on documents and processed a variable annuity exchange without PD's authorization.

On or about January 25, 2008, Smith's firm discharged him and reported on his Form U5 that he had "instituted unauthorized trades in [a] client's account and signed [a] client's name on various investment documents."

As a result of PD's complaint, and his request to reinstate his original variable annuity contract, in February 2008, the purchase transaction was reversed, and PD's original variable annuity contract was fully restored in the amount of \$292,121.68.

In February 2008, the insurance company also recaptured the commission amount of approximately \$11,462.33, which had been paid to Smith's firm, on or about December 24, 2007, for the purchase of the variable annuity. Additionally, in or about January or February 2008, Smith's firm deducted approximately \$10,316.10 from Smith's earnings, which would have been Smith's share of the commission from the unauthorized transactions on behalf of PD.

FIRST CAUSE OF ACTION

In or about December 2007, without customer PD's knowledge, authorization or consent, Smith effected the surrender and liquidation of a variable annuity valued at \$292,121.68, in PD's IRA account, and used the proceeds to purchase for PD's IRA account a variable annuity issued by another insurance company in the amount of \$286,558.35.

Executing unauthorized transactions without a customer's knowledge, authorization and consent, constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

By reason of the foregoing, Smith violated Conduct Rule 2110.

SECOND CAUSE OF ACTION

To effect the unauthorized variable annuity transactions for his customer, in or about December 2007, Smith, without the knowledge, authorization and consent of PD, affixed or caused to be affixed customer signatures and/or initials of PD on variable annuity documents requiring the customer's signature and/or initials, as more fully described above.

Affixing or causing to be affixed signatures and/or initials of a customer on documents related to variable annuity transactions, without a customer's knowledge, authorization and consent, constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

By reason of the foregoing, Smith violated Conduct Rule 2110.

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 responsibilities under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

1. Suspended for eighteen (18) months from association with any FINRA member in any capacity.
2. Fined in the amount of \$5,000.00.

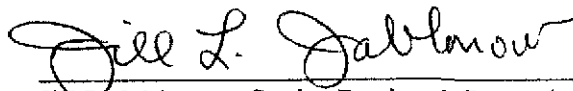
The fine shall be due and payable either immediately upon reassociation with a member firm following the 18-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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

A handwritten signature in cursive script, reading "Jill L. Jablonow", written over a horizontal line.

Jill L. Jablonow, Senior Regional Counsel
Sandra J. Harris, Deputy Regional Chief Counsel
Jacqueline D. Whelan, Regional Chief Counsel
FINRA Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2659; Fax: (213) 617-1570
jill.jablonow@finra.org