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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

DEREK ALLEN CHOWEN
Registered Representative
(CRD No. 4286245)

Respondent

**Disciplinary Proceeding
No. 2008012409101**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On May 18, 2007, Derek Allen Chowen (Chowen) sold a total of \$38,000 of various mutual funds that were held in the account of a member of the public, and on May 21, 2007, Chowen used the proceeds to purchase \$38,000 of Franklin Mutual Shares Fund, all without the knowledge and consent of the customer, and in the absence of written or oral authorization to Chowen to exercise discretion in the customer's account. Such conduct violated NASD Rule 2110.

2. From May 18, 2007 to July 24, 2007, Chowen exercised discretion in the accounts of four customers, pursuant to verbal authority, without having obtained prior written authorization from the customers and written approval from his employing member, in violation of NASD Rules 2110 and 2510(b).

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3. On August 6, 2008, and September 5, 2008, FINRA Staff (Staff) sent letters to Chowen requesting information and documentation about his actions, but Chowen failed to respond to the requests for information, in violation of NASD Rules 2110 and 8210.

RESPONDENT AND JURISDICTION

4. From on or about December 5, 2000 to on or about February 11, 2008, Chowen was registered as a General Securities Representative with Edward Jones (Member), a member of FINRA. From on or about February 4, 2008 to on or about June 17, 2008, Chowen was registered in the same capacity with another member of FINRA. Chowen is not currently associated with any member of FINRA. Since this Complaint is filed within two years of the termination of Chowen's registration with the Member, Chowen is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of the FINRA's By-Laws.

**FIRST CAUSE OF ACTION
NASD Rule 2110 – Unauthorized Transactions by Chowen.**

5. The Department realleges and incorporates by reference paragraphs number 1 through 4 above.

6. During all relevant times, RB was a member of the public who maintained a Simplified Employee Pension plan (SEP) securities account at the Member, which was serviced by Chowen.

7. On or about May 18, 2007, Chowen placed orders to sell shares of five mutual funds in RB's SEP Account, which included:

- a. 356.793 Class B shares of Federated American Leaders Fund, at a sales price of \$25.42 per share for the principal amount of \$9,069.69, with a gross deferred sales charge of \$69.69, leaving net proceeds of \$9,000.00;

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- b. 598,504 Class B shares of Lord Abbett Mid Cap Value Fund, at a sales price of \$23.47 per share for the principal amount of \$14,046.89, with a gross deferred sales charge of \$46.89, leaving net proceeds of \$14,000.00;
 - c. 245,081 Class B shares of Federated Market Opportunity, at a sales price of \$12.31 per share for the principal amount of \$3,016.95, with a gross deferred sales charge of \$16.95, leaving net proceeds of \$3,000.00;
 - d. 1004.56 Class B shares of Federated Kaufmann Fund, at a sales price of \$6 per share for the principal amount of \$6,027.36, with a gross deferred sales charge of \$27.36, leaving net proceeds of \$6,000.00; and,
 - e. 230,431 Class B shares of Federated Capital Appreciation Fund, at a sales price of \$26.27 per share for the principal amount of \$6,053.42, with a gross deferred sales charge of \$53.42, leaving net proceeds of \$6,000.00.
8. On May 21, 2007, Chowen used the proceeds for the sale of the five mutual fund positions to purchase 1,269.629 Class A shares of Franklin Mutual Shares Fund for RB's SEP Account, at a purchase price of \$29.93 per share for a total purchase price of \$38,000.00, and he received a gross commission of \$1,900 and a net commission of \$760 on the transaction.
9. Chowen placed the orders to sell the five mutual fund positions and purchase a different mutual fund, as described above, without the knowledge or consent of RB, and in the absence of written or oral authorization to Chowen to exercise discretion in RB's SEP Account.
10. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Rule 2110 by Chowen.

**SECOND CAUSE OF ACTION
NASD Rules 2110 and 2510(b) – Use of Discretion Without Written Authorization From
the Customers and Approval by the Unauthorized Transactions by Chowen.**

11. The Department realleges and incorporates by reference paragraphs number 1 through 10 above.

12. During all relevant times, ES, KS, JH and JS were members of the public. JS and ES were husband and wife who maintained separate IRA Accounts at the Member, which were serviced by Chowen. JH maintained a securities account with the Member, which was serviced by Chowen. KS maintained a securities account with the Member in the name of her Revocable Living Trust, which was serviced by Chowen.

13. From on or about May 18, 2007 to on or about June 26, 2007, Chowen, pursuant to verbal authority, exercised discretion in the IRA account of ES, without having obtained prior written authorization from ES and prior written acceptance of the account as discretionary by the Member. During this period of time Chowen placed a total of 4 purchases and 5 sales of securities on a discretionary basis. For these transactions, ES was charged gross commissions of \$1,622.50, and Chowen received net commissions of \$649.

14. On or about June 26, 2007, Chowen, pursuant to verbal authority, exercised discretion in the revocable living trust account of KS, without having obtained prior written authorization from KS and prior written acceptance of the account as discretionary by the Member. On this date, Chowen placed a total of 1 purchase and 2 sales of securities on a discretionary basis. For these transactions, KS was charged gross commissions of \$488, and Chowen received net commissions of \$195.20.

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15. On or about July 24, 2007, Chowen, pursuant to verbal authority, exercised discretion in the account of JH, without having obtained prior written authorization from JH and prior written acceptance of the account as discretionary by the Member. On this date, Chowen placed a total of 1 purchase and 4 sales of securities on a discretionary basis. For these transactions, JH was charged gross commissions of \$950, and Chowen received net commissions of \$380.

16. On or about July 24, 2007, Chowen, pursuant to verbal authority, exercised discretion in the IRA account of JS, without having obtained prior written authorization from JS and prior written acceptance of the account as discretionary by the Member. On this date, Chowen placed a total of 1 purchase and 4 sales of securities on a discretionary basis. For these transactions, JH was charged gross commissions of \$600, and Chowen received net commissions of \$240.

17. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2510(b) by Chowen.

**THIRD CAUSE OF ACTION
NASD Rules 2110 and 8210 - Failure to Respond to the Staff's
Requests for Information by Chowen.**

18. The Department realleges and incorporates by reference paragraph numbers 1 through 17 above.

19. On or about August 6, 2008, Staff sent Chowen a request that he provide a written statement responding to questions regarding the alleged unauthorized transactions in RB's SEP account, as noted in paragraphs 6 through 10 above, and the alleged trading on a discretionary basis without written authorization and approval by the Member in the accounts of ES, KS, JH

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and JS, as noted in paragraphs 12 through 17 above, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Chowen's address of record as contained in the records of the Central Registration Depository (CRD Address). The first class mailing was not returned to the Staff, and the certified return receipt was returned apparently signed by Chowen, showing that he received the letter on August 11, 2008.

20. Having not received a response to the initial request for information and documentation, on or about September 5, 2008, the Staff sent Chowen a letter marked "second request," regarding the alleged unauthorized transactions in RB's SEP account, as noted in paragraphs 6 through 10 above, and the alleged trading on a discretionary basis without written authorization and approval by the Member in the accounts of ES, KS, JH and JS, as noted in paragraphs 12 through 17 above, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Chowen's CRD Address. The first class mailing was not returned to the Staff, and the certified mailing was returned marked "Return to Sender – Unclaimed."

21. Chowen failed to respond to each and all of the requests for documents and information described in paragraphs 19 and 20 above, and the time for Chowen to respond has passed.

22. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Rules 2110 and 8210 by Chowen.

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 monetary sanctions and 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 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

July 15, 2009
Date


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