

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

RECEIVED
2009 AUG 14 A 9:33
REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESSE GOMEZ, JR.
CRD No. 2702056,

Respondent.

Disciplinary Proceeding
No. 2008012558301

Hearing Officer – MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: August 13, 2009

INTRODUCTION

Disciplinary Proceeding No. 2008012558301 was filed on March 25, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Jesse Gomez, Jr. (Gomez) submitted an Offer of Settlement (Offer) to Complainant on August 11, 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, Gomez 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

000094229 2009

findings and violations that he failed to timely provide information in response to requests for information made pursuant to NASD Procedural Rule 8210, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of his permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Gomez was associated with SCF Securities, Inc. (SCF) from on or about August 15, 2005 through on or about October 4, 2007, where he was registered as an Investment Company & Variable Contracts Products Representative, a General Securities Representative, and a General Securities Principal. Before associating with SCF, Gomez was registered with Linsco/Private Ledger Corp. (LPL) from September 1999 through April 2005. Since his termination from SCF, Gomez has not associated with another member firm. Gomez has no relevant disciplinary history.

FINDINGS AND CONCLUSIONS

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

1. FINRA staff commenced an investigation of Gomez following a customer complaint alleging that, in August 2007, Gomez withdrew, without authorization, approximately \$10,000.00 from the customer's variable annuity account. The staff's investigation was subsequently expanded to also address whether Gomez, while associated with SCF, exercised discretion in customer accounts located at broker-dealers other than his employer firm. To further its investigation, staff sought to obtain information and documentation from Gomez related to the above topics by means of written Rule 8210 requests.

2. On July 22, 2008, FINRA staff sent, by first class and certified mail, a written Rule 8210 request to Gomez at his residential CRD address, [REDACTED]

██████ (CRD Address). The information and documentation requested therein was to be provided to FINRA staff by August 5, 2008. Gomez requested an extension of time to respond to the July 22nd Rule 8210 request and an extension was granted through August 25, 2008.

3. On August 26, 2008, Gomez notified staff in writing that he would not be providing information and documentation requested by staff on July 22, 2008 on grounds that FINRA lacked jurisdiction. Gomez further advised staff that if his position was incorrect, once staff advised him of the basis for FINRA's jurisdiction, he would promptly provide the requested information.

4. FINRA staff sent another Rule 8210 request for this information to Gomez on September 11, 2008. The September 11th Rule 8210 request was sent to the CRD address by first class mail and certified mail. A copy was also sent to Gomez on September 11th by facsimile, directed to the facsimile number listed on the letterhead used by Gomez to respond to the staff on August 26, 2008. Gomez was to respond to the September 11th Rule 8210 request by September 18, 2008.

5. In the September 11th Rule 8210 request, staff advised Gomez that FINRA had jurisdiction to seek and obtain the requested information and documentation. Specifically, staff advised Gomez that FINRA had jurisdiction because: i) the customer's variable annuity was a securities product subject to FINRA's jurisdiction; ii) the exercise of discretion in customer accounts at broker-dealers other than at SCF, while registered at SCF, could be characterized as private securities transactions (*see* NASD Notice to Members 99-44 and 96-33), over which FINRA has jurisdiction; and, iii) FINRA has jurisdiction to review outside business activities.

6. The September 11th request further provided that:

This second request is made pursuant to NASD Procedural Rule 8210, which requires persons associated, or formerly associated, with a member firm to

provide information with respect to any matter involved in an investigation, complaint, or proceeding. Failure to comply with this request may subject you to disciplinary action.

7. Gomez failed to provide the information and documentation requested in the September 11th Rule 8210 request by September 18, 2008.

8. Only after the Complaint in this matter was filed, did Gomez elect to respond to the two Rule 8210 requests. Specifically, on or about July 6, 2009, Gomez provided the information and documentation requested by staff. Each failure to timely provide the requested information constituted a separate and distinct violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Gomez.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Gomez 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 suspended for twelve months from association with any FINRA member in any capacity and fined \$5,000.00. The fine shall be due and payable either immediately upon reassociation with a member firm following the twelve 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, appearing to read "Heather Hawker", written over a horizontal line.

Heather Hawker
Senior Regional Counsel
FINRA Department of Enforcement
4600 S. Syracuse St., Ste. 1400
Denver, CO 80237-2719
(303) 446-3110
Fax. No. (303) 620-9450
heather.hawker@finra.org