

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

Department of Enforcement,

Complainant,

v.

HORUS RIVER BROWN
(CRD No. 3269819),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013380501

Hearing Officer – MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 5, 2010

INTRODUCTION

Disciplinary Proceeding No. 2008013380501 was filed on November 3, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Horus River Brown submitted an Offer of Settlement (Offer) to Complainant on January 27, 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

From June 8, 2005 through April 22, 2008, Brown was associated with Banc of America Investment Services, Inc. (the Firm) as a General Securities Representative. Pursuant to Article V, Section 4 of FINRA's By-Laws, Brown remains subject to FINRA's jurisdiction.

FINDINGS AND CONCLUSIONS

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

FIRST CAUSE OF ACTION

On or about April 30, 2007, customer L.B. opened a brokerage account at the Firm. Brown was the Firm's Financial Advisor assigned to the account. Within a week, Brown purchased on L.B.'s behalf, 8,000 Wachovia preferred shares having a value of approximately \$200,000.00.

In early June 2007, Brown contacted L.B. and recommended that she invest \$200,000.00 in an entity named Joe Media, Inc. Brown represented that: (i) Joe Media was planning to install Wi-Fi technology in Denny's restaurants throughout the United States; (ii) Joe Media was owned by a former colleague whom he knew and trusted; and (iii) he had invested \$25,000.00. Brown also told L.B. that on April 1, 2008, upon demand, she would receive the return of her principal plus 10%, i.e., \$220,000.00. Brown also assured her that Joe Media would be a safe investment. On June 14, 2007, L.B. went to Brown's office at the Firm to complete the investment paperwork. But the only document that Brown provided and the only document that L.B. signed was the Firm's Retail Journal Request Form authorizing the transfer of L.B.'s 8,000 Wachovia

preferred shares to Joe Media's account at the Firm. L.B. signed the Retail Journal Request Form after Brown told her that the most expeditious way to make the investment would be to transfer her Wachovia shares to Joe Media's account.

In July 2007, L.B. met with Brown after she received her June 2007 account statement and noticed that her account at the Firm had diminished in value by more than \$200,000.00. Among other things, Brown told her that she needed to add the \$200,000.00 Joe Media investment to the listed total to ascertain the true value of her account.

In early December 2007, L.B. asked Brown for documentation of her \$200,000.00 investment. At an ensuing meeting, Brown provided her with a two-page document entitled "Term Sheet for Joe Media, Inc. \$200,000 10% Convertible Debenture" and told her that it was documentation of her investment. According to the Term Sheet, the debenture's maturity date was April 1, 2008; the interest rate was 10% per annum; the debenture was convertible into Joe Media common stock at the debenture holder's election at any time prior to the maturity date; and the offering proceeds were intended to support Joe Media's operations. At the meeting, Brown told L.B. that he had invested in the company, encouraged her to meet with a Joe Media principal, and recommended that she invest an additional amount.

In late February 2008, L.B. met with Joe Media's principal at a Denny's restaurant in San Diego, California. At the meeting, Joe Media's principal encouraged her to invest more money into the company. He claimed that a pending patent application might cause the company's value to "sky-rocket."

On February 29, 2008, L.B. sent Joe Media's principal an email demanding the return of her \$200,000.00 principal and the \$20,000.00 in promised interest on or before April 5, 2008.

In mid-March 2008, Brown assured L.B. that she need not worry about the return of her investment principal on April 1, 2008.

On April 1, 2008, L.B. did not receive the return of her principal or any amount at all. Indeed, L.B. never received the return of her \$200,000.00 principal or any interest payment at all from Joe Media, Inc.

L.B.'s investment in Joe Media was a security in the form of a note or convertible debenture. Brown's recommendation and participation in L.B.'s investment in Joe Media involved a securities transaction outside the scope of his employment with the Firm. Brown did not provide the Firm with prior written notice of his participation in this transaction. Moreover, he did not obtain approval from the Firm to participate in this transaction and did not give the Firm the opportunity to record this transaction on its books and records or to supervise his participation in the transaction.

By reason of the foregoing, Brown violated NASD Rules 3040 and 2110.

SECOND CAUSE OF ACTION

First Letter

On September 4, 2008, the staff, in connection with its investigation into Brown's activities, sent his counsel a letter ("First Letter") informing him that the staff was investigating allegations that Brown engaged in outside business activities away from the Firm and requested information and documents. The staff's inquiry was sent pursuant to NASD Rule 8210 and requested that Brown provide a signed and dated statement addressing the staff's questions as well as certain documents.

The First Letter sought, among other things, the following information and documents:

- The identity of each entity from whom Brown received compensation for business activities while employed by the Firm (first request);
- The identity of persons at the Firm whom Brown told about the business activities referenced in his response to the first request (second request);
- The identity of persons at the Firm who granted Brown permission to participate in the business activities identified in his response to the first request (third request);
- Copies of monthly, quarterly, or annual Firm questionnaires in which Brown identified any of the activities referenced in his response to the first request (fifth request);
- Copies of documents evidencing compensation for the activities identified in Brown's response to the first request (sixth and eighth requests);
- An accounting of all payments received for activities described in Brown's response to the first request (seventh request); and
- The identity of each person to whom Brown introduced each of the entities and persons referenced in Brown's response to the first request (eleventh request)

The September 4, 2008 letter also sought copies of Brown's tax returns for 2007 (Request No. 27) and bank account statements for 2007 (Request No. 28).

Approximately two weeks later, the staff received Brown's response, dated September 16, 2008. Brown failed to provide any meaningful response by misconstruing the first request and then stating "Not Applicable" for most of the remaining requests.

For example, with respect to the first request that sought information about whether he received compensation from any other person or entity while employed by the Firm, Brown responded, *"In my employment capacity with [the Firm] the answer is No."* He then answered "Not Applicable" to the succeeding questions which sought information and/or documents concerning: the identity of Firm persons whom he told about the activities (second request); the identity of Firm persons who granted him permission to participate in the activities (third request); copies of compliance questionnaires which identified the business activities (fifth request); copies of documents evidencing compensation for the activities (sixth and eighth requests); an accounting of the payments received for the activities (seventh request); and the identity of persons whom he introduced to each of the businesses and persons referenced in his response to the first request (eleventh request).

Brown also refused to provide any copies of his tax returns or bank statements. With respect to those requests, he stated without further explanation, "Objection. Invasion of privacy of myself and [RV]. I do not have authority to disclose private information of [RV]. Will not be provided."

Second Letter

On February 26, 2009, pursuant to FINRA Rule 8210, the staff wrote to Brown's counsel and addressed Brown's evasive responses as well as his failure and refusal to produce responsive documents. This letter ("Second Letter") requested that Brown supplement his deficient

responses to, and provide all information requested in, the First Letter no later than March 16, 2009.

For example, with respect to the first request that sought the identity of each entity from whom Brown received compensation for business activities while employed by the Firm, the February 26, 2009 letter informed Brown that regardless of his capacity, he was required to identify every business activity in which he received or expected to receive compensation while employed at the Firm. With respect to the other requests discussed above, namely Request Nos. 2, 3, 5-8, and 11, the letter explained that to the extent that Brown engaged in business activities outside of the Firm, he was required to answer the question. With respect to Request No. 27 which sought Brown's 2007 tax returns, the staff, citing *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596 (Nov. 8, 2007), stated that Brown was required to produce the returns. Finally, with respect to the bank account statements, the staff stated that Brown was required to produce the documents because the request was made pursuant to Rule 8210.

Third Letter

Because Brown failed to respond to the Second Request, the staff, on March 24, 2009, pursuant to Rule 8210, sent a letter ("Third Letter") to Brown's counsel referencing the Second Letter and requesting that the information and documents be provided no later than April 9, 2009. The Third Letter also stated that a "failure to comply with this request may subject Horus River Brown to disciplinary action."

The following day, Brown, through counsel, stated that he would not provide any further responses.

By reason of the foregoing, Brown violated NASD Rules 8210 and 2110 and FINRA Rules 8210 and 2010.

THIRD CAUSE OF ACTION

On June 30, 2009, pursuant to FINRA Rule 8210, the staff sent Brown's counsel a letter requesting that Brown appear for on-the-record testimony ("OTR") on July 22, 2009, at 9:00 a.m. at FINRA's Los Angeles District Office. This testimony was requested in connection with the staff's investigation into allegations relating to Brown's outside business activities and private securities transactions.

On July 20, 2009, Brown's counsel telephoned the staff and stated that neither he nor his client would be able to appear for the scheduled July 22, 2009 OTR. The staff suggested that the OTR be rescheduled for the following week (the week of July 27, 2009) but Brown's counsel stated that he was also unavailable during that week. Later that day, the staff wrote to Brown's counsel and suggested that the OTR be rescheduled for either August 5, 6, or 11, 2009 and asked Brown's counsel to select, by the end of the week, the most convenient day. Brown's counsel did not respond to the July 20, 2009 letter.

On July 27, pursuant to FINRA Rule 8210, the staff sent Brown's counsel a letter requesting that Brown appear for an OTR on August 11, 2009, at 9:00 a.m. at FINRA's Los Angeles District Office.

On August 6, 2009, Brown's counsel sent the staff a one sentence letter stating that "Mr. Brown will not appear at the examination as he will assert his 5th Amendment Right against self incrimination." Neither Brown nor his counsel ever articulated any basis for this privilege assertion.

Brown failed to appear for his OTR on August 11, 2009.

By reason of the foregoing, Brown violated FINRA Rule 8210 and 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 responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred in all capacities.

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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