

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY E. WILLARD
(CRD No. 4399211),

Respondent.

Disciplinary Proceeding
No. 20080145634-01

Hearing Officer – RSH

DEFAULT DECISION

May 11, 2011

For making misrepresentations to his FINRA-regulated firm, in violation of Rule 2110, the Respondent was suspended for two years and fined \$60,656.47.

Appearances

John S. Han, Senior Regional Counsel, and Jacqueline D. Whelan, Regional Chief Counsel, San Francisco, CA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Jeffrey E. Willard ("Willard") after FINRA-regulated firm Ameriprise Financial Services, Inc. ("Ameriprise") notified FINRA that a customer had filed a complaint against Willard. The customer, DH, alleged that Willard had failed to disclose the costs and fees associated with her purchase of certain investments and that the recommendations of those investments were unsuitable for her. FINRA staff

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investigated Willard's conduct, and as a result of the investigation, Enforcement filed the Complaint on December 23, 2010.¹

In its Complaint, Enforcement charged that Willard violated Rule 2110² by making false statements to Ameriprise in connection with the purchase of insurance policies for customer DH. Enforcement filed the Complaint with the Office of Hearing Officers on December 23, 2010. Willard did not answer or otherwise respond to the Complaint. Consequently, on March 7, 2011, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of John S. Han and nine exhibits. Willard did not reply to the motion.³

II. Jurisdiction

Willard first became registered with FINRA as a General Securities Representative ("GSR") in June 2001. He was registered through Ameriprise from September 19, 2005, through April 17, 2009. Willard's most recent registration with a FINRA-regulated firm was terminated on or about November 25, 2009. He has not been associated with a FINRA-regulated firm since then.⁴

Although Willard is not currently registered with a FINRA-regulated firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following

¹ Affidavit of John S. Han ("Han Aff.") ¶ 22.

² As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. Initially, FINRA adopted NASD's rules and certain NYSE rules, but it is in the process of establishing a consolidated FINRA rulebook. To that end, on December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and Rule 2110 was re-numbered to Rule 2010. See Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD Rule 2110, which was in effect at the time of the Respondent's alleged misconduct and cited in the Complaint as the basis for the charge against him.

³ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

⁴ Complainant's Exhibit ("CX")-1; Han Aff. ¶¶ 5-7.

the termination of his registration with a FINRA-regulated firm and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA-regulated firm.⁵

III. Willard's Default

On January 11, 2011,⁶ Enforcement sent the Notice of Complaint and Complaint to Willard by first-class certified mail (return receipt requested) at his residential address recorded in FINRA's Central Registration Depository ("CRD Address").⁷ The mailing was returned, marked, "unclaimed."⁸ Willard did not respond to the Complaint by February 8, 2011, the deadline specified in the Notice of Complaint.⁹

On February 9, 2011, Enforcement sent the Second Notice of Complaint and Complaint by first-class and certified mail to Willard at his CRD Address.¹⁰ The first-class mailing was not returned. Enforcement has not received the certified mail receipt; however, according to the U.S. Postal Service's tracking information, a delivery attempt was made, and a notice of delivery was left at Willard's CRD Address.¹¹ Willard did not respond to the Complaint by February 28, 2011, the deadline specified in the Second Notice of Complaint.¹² Enforcement has no knowledge of an address for Willard that is more recent than the CRD Address.¹³

To date, Willard has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

⁵ 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").

⁶ The Complaint and Notice were first sent to Willard on December 12, 2010; however, because Willard notified the Office of Hearing Officers that he had received correspondence from the Office of Hearing Officers, but not the Complaint, Enforcement mailed the Complaint and Notice again.

⁷ CX-6; Han Aff. ¶ 13.

⁸ CX-7; Han Aff. ¶ 14.

⁹ Han Aff. ¶ 15.

¹⁰ CX-8; Han Aff. ¶ 17.

¹¹ CX-9; Han Aff. ¶¶ 18-19.

¹² Han Aff. ¶ 20.

¹³ Han Aff. ¶ 21.

By failing to answer the Complaint, Willard defaulted. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's Motion for Entry of Default Decision.

IV. Violation

The Complaint alleges that on or about July 27, 2006, Willard submitted an application to Ameriprise to effect the purchase of a \$2 million variable universal life insurance policy ("VUL") for customer DH. In a cover letter accompanying the application, Willard wrote, "The purpose of the insurance is to set up a permanent life insurance policy to protect the estate of [DH], who has recently inherited \$2,500,000 and wants to protect it from taxes for her heirs." Willard's cover letter was false because, although DH expected to inherit money from her mother, as of July 27, 2006, her mother was still alive. Willard knew that DH's mother was still alive when he wrote the letter.

On or about August 7, 2006, Willard received an e-mail inquiry about DH's purchase of the \$2 million VUL from ES, an Ameriprise compliance supervisor. In the e-mail, ES wrote that he was reviewing the suitability of the transaction and requested an explanation for the purchase. In his e-mailed response to ES, Willard wrote: "The client needs a \$2 million contract because they just inherited an estate worth \$2.5 million, which puts their total estate at approximately \$3.1 million." Willard's statement to ES was false; DH had not inherited an estate. Further, Willard knew that the person DH expected to receive an inheritance from, her mother, was still alive when he wrote the e-mail.

On or about February 16, 2007, Willard submitted a second application to Ameriprise to effect the purchase of a \$6 million VUL for DH. In the cover letter

accompanying the application, Willard wrote, "The purpose of the insurance is to receive funds from an inherited \$2 million family limited partnership which she is receiving tax-free and wants to preserve a portion of those funds in a tax-free status for her family's future and for her heirs." Willard's cover letter was false; DH had not inherited a \$2 million family limited partnership as of February 16, 2007. Willard knew that the person DH expected to inherit from, her mother, was still alive when he wrote the letter.

Ameriprise issued the \$2 million VUL on or about October 11, 2006, and Willard received commissions totaling approximately \$12,034.41 on the transaction. Ameriprise issued the \$6 million VUL on or about March 27, 2007, and Willard received commissions totaling approximately \$38,622.06 on the transaction. Willard's commissions on the two transactions totaled approximately \$50,656.47.

Conduct Rule 2110 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." In *Department of Enforcement v. Shvarts*, the National Adjudicatory Council ("NAC") explained that Rule 2110 "is not limited to rules of legal conduct but rather...it states a broad ethical principle...Disciplinary hearings under Conduct Rule 2110 are ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred...[FINRA] has authority to impose sanctions for violations of 'moral standards' even if there was no 'unlawful' conduct."¹⁴

As set forth in the Complaint, Willard made misrepresentations to his firm by claiming on multiple occasions that his customer had inherited at least \$2 million when, in fact, he knew that she had not yet inherited the money because her mother was still alive. The misrepresentations were material because Willard made them in the context of

¹⁴ *Department of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NAC June 2, 2000).

seeking firm approval for purchases of multi-million dollar insurance policies. The facts alleged in the Complaint establish that, for purposes of this default decision, Willard violated Rule 2110.

V. Sanction

While the FINRA Sanction Guidelines ("Guidelines") do not contain a guideline for misrepresentations to a member firm, the guideline for falsification of records is analogous because Willard made his misrepresentations by including false information in firm records, *i.e.*, insurance application cover letters and firm e-mails. For falsification of records, the Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension of up to two years where mitigating factors exist, or a bar in egregious cases.¹⁵

In this case, Enforcement argues that, while this is a serious case because firm records were falsified, it is not egregious because DH did ultimately receive an inheritance from her mother. Nevertheless, Willard misrepresented material facts to his firm about a customer's financial circumstances. Moreover, Willard had no assurance what the actual value of DH's inheritance would be, or whether DH would actually receive the inheritance she expected. Willard misrepresented his customer's financial situation in order to obtain commissions on the VULs. For these reasons, the Hearing Officer finds that Willard should be fined \$60,656.47, which includes \$50,656.47 in disgorgement of commissions. He is also suspended for two years from associating with any FINRA-regulated firm in any capacity.

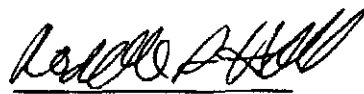
VI. Order

For making material misrepresentations to his FINRA-regulated firm, in violation of Rule 2110, Jeffrey E. Willard is suspended from associating with any FINRA-

¹⁵ *FINRA Sanction Guidelines* 37 (2011), www.finra.org/sanctionguidelines.

regulated firm in any capacity for two years and fined \$60,656.47. If this Default Decision becomes the final disciplinary action of FINRA, Willard's suspension shall begin on June 20, 2011, and end at the close of business on June 19, 2013. The fine shall be due and payable if and when he re-enters the securities industry.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Jeffrey E. Willard (via first-class mail)
John S. Han, Esq. (via electronic and first-class mail)
Jacqueline D. Whelen, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeffrey E. Willard (CRD No. 4399211),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080145634-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Jeffrey E. Willard made material written misrepresentations to his member firm in connection with purchases of a \$2 million Variable Universal Life (VUL) policy and a \$6 million VUL policy.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in June 2001 by filing a Form U4 to become registered with a FINRA member. He passed the Series 6 examination in July 2001 and the Series 7 and 66 examinations in September 2005.
3. On or about August 15, 2005, Respondent filed a Form U4 to request registration as a General Securities Representative at FINRA member Ameriprise Financial Services, Inc. (the Firm). FINRA approved his request for registration on or about September 19, 2005. Respondent voluntarily terminated from the Firm on or about December 19, 2007.
4. Respondent's last registration with a FINRA member ceased on or about November 25, 2009.

5. Although Respondent has not been registered with a FINRA member firm since November 25, 2009, Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because:
- a. Respondent's last registration with a FINRA member was terminated less than two years ago; and
 - b. the Complaint charges Respondent with misconduct committed while Respondent was associated with a FINRA member.

CAUSE OF ACTION
Misrepresentations to Member Firm (NASD Conduct Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. On or about July 27, 2006, Respondent submitted an application to the Firm to effect the purchase of a \$2 million VUL policy for customer DH. In a cover letter accompanying the application, Respondent wrote, "The purpose of the insurance is to setup [sic] a permanent life insurance policy to protect the estate of [DH] who has recently inherited \$2,500,000 and wants to protect it from taxes for her heirs."
8. Respondent's statement in the cover letter was false in that DH had not inherited \$2,500,000 as of July 27, 2006. In fact, Respondent knew that the person from whom DH expected to receive the inheritance, her mother PH, was still alive.
9. On or about August 7, 2006, Respondent received an email inquiry about the above-described transaction from ES, a Field Compliance Supervisor at the Firm. In the email, ES wrote that he was reviewing the suitability of the transaction and requested an explanation for the purchase.

10. That same day, in an emailed response to ES, Respondent wrote, "The client needs a \$2 million contract because they [sic] just inherited an estate worth \$2.5 million which puts their [sic] total estate at approximately \$3.1 million."
11. Respondent's statement to ES was false in that DH had not inherited an estate worth \$2.5 million as of August 7, 2006. In fact, Respondent knew that the person from whom DH expected to receive the inheritance, PH, was still alive.
12. On or about October 11, 2006, the Firm issued the above-described \$2 million VUL policy. Respondent received commissions totaling approximately \$12,034.41 for this transaction.
13. On or about February 16, 2007, Respondent submitted an application to the Firm to effect the purchase of a \$6 million VUL policy for DH. In a cover letter accompanying the application, Respondent wrote, "The purpose of the insurance is to receive funds from an inherited \$2 Million Family Limited Partnership which she is receiving tax free and wants to preserve a portion of those funds in a tax free status for her family's future and for her heirs."
14. Respondent's statement in the cover letter was false in that DH had not inherited the \$2 million Family Limited Partnership as of February 16, 2007. In fact, Respondent knew that the person from whom DH expected to receive the inheritance, PH, was still alive.
15. On or about March 27, 2007, the Firm issued the above-described \$6 million VUL policy. Respondent received commissions totaling approximately \$38,622.06 for this transaction.

16. By making material misrepresentations to his member firm in order to obtain firm approval of securities purchases, Respondent failed to adhere to high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

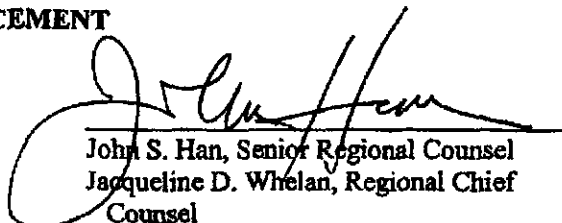
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 23, 2010



John S. Han, Senior Regional Counsel
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Counsel

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