

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALAN ENGLISH SMITH
(CRD No. 2201854),

Respondent.

Disciplinary Proceeding
No. 20080149617

Hearing Officer – LBB

DEFAULT DECISION

May 4, 2011

Respondent Alan English Smith is barred for providing partial responses to requests for information, and failing to provide requested documents, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Respondent is also barred for engaging in outside business activities without providing prompt written notice to his firm, in violation of NASD Conduct Rules 3030 and 2110.

Appearances

Mark Graves, Senior Regional Counsel, San Francisco, California, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the two-cause Complaint in this disciplinary proceeding on December 27, 2010, charging Respondent Alan English Smith (“Respondent”) with failing to respond fully and completely to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, and with engaging in outside

business activities without providing prompt written notice to his member firm, in violation of NASD Conduct Rules 3030 and 2110.¹

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer or otherwise responded to the Complaint. The Department of Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions on March 29, 2011, to which Respondent did not respond. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted and Enforcement's motion is granted.²

I. Respondent and FINRA's Jurisdiction

Respondent first became associated with a member firm in 1990, and first registered with FINRA in 1992. From 1996 until September 4, 2008, he was registered with member firm LPL Financial Services Corporation ("LPL") as a General Securities Representative and a General Securities Principal. He was registered with another member firm from April 2009 until September 4, 2009. He has not been registered with a member firm since September 4, 2009. Complaint ¶ 2; Decl. ¶ 5; CX-1.

Although Respondent has not been registered with a member firm since September 2009, he is subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years of the termination of his registration with a

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the FINRA Conduct and Procedural Rules that were in effect at the time of the violation charged in the First Cause of Action, and the NASD Conduct Rules that were in effect at the time of the violation charged in the Second Cause of Action. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which includes the Declaration of Mark Graves in Support of Motion for Entry of Default Decision, and supporting documentation that is attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited herein as "CX-____."

member firm, and it charges him with violating FINRA's Rules while he was associated with a member firm and failure to respond to requests for information that were issued within two years after the termination of his registration with a member firm.

II. Respondent's Default

Enforcement served the Notice of Complaint and Complaint on Respondent by certified mail on December 21, 2010, at his residential address as listed in the Central Registration Depository ("CRD address"). Enforcement received a return receipt, signed by Respondent on December 22, 2010. Decl. ¶¶ 7-8; CX-2, CX-3.

Respondent did not answer or otherwise respond to the Complaint. Enforcement served Respondent with a Second Notice of Complaint and a copy of the Complaint by certified mail at his CRD address on January 20, 2011. Enforcement received a return receipt, signed by Respondent on January 21, 2011. Decl. ¶ 9; CX-4.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

III. Respondent Violated FINRA Rules 8210 and 2010

The First Cause of Action charges Respondent with failing to respond fully and completely to requests for information issued pursuant to FINRA Rule 8210.

Upon terminating Respondent's employment with LPL, the firm filed a Form U5 disclosing that Respondent had been discharged because the "firm reviewed evidence that [Respondent] failed to disclose activities in violation of firm policies and procedures, including (1) serving as customer's executor and trustee; (2) executing transactions in customer's account after death and failing to notify LPL of ongoing probate litigation with customer's heirs and

allegations that [Respondent] misappropriated customer's assets by making withdrawals from her account after her death." Complaint ¶ 5.

FINRA staff then began an investigation. Complaint ¶ 5. The staff sent a letter to Respondent on June 19, 2009, pursuant to FINRA Rule 8210, requesting information about the reason for the termination of Respondent's employment by LPL. The letter was sent by first-class mail to Respondent's CRD address. Complaint ¶ 6. On August 26, 2009, FINRA staff received a letter from Respondent's attorney, dated August 25, 2009, responding to some of the questions in the staff's Rule 8210 request. No supporting documents were attached, but the attorney invited the staff to come to his office to review the documents. Complaint ¶ 7. In a telephone conversation, the attorney informed the staff that he did not have the documents and would arrange to have Respondent bring the documents to the attorney's office. After a series of telephone conversations between the staff and the attorney, the attorney informed the staff that Respondent had stopped returning the attorney's telephone calls, and that the attorney did not have the documents. Complaint ¶¶ 8-9.

Pursuant to FINRA Rule 8210, the staff sent a second request for information to Respondent at his CRD address on December 15, 2009. The second request was sent by first-class and certified mail. A certified mail return receipt was delivered to the staff on December 17, 2009, signed by Respondent. Complaint ¶¶ 10-11. Respondent called the staff several times after receiving the letter to arrange to bring the documents to FINRA's office, but failed to provide the documents and information required by the requests for information. Complaint ¶ 12. Staff contacted Respondent's attorney, who said he no longer represented Respondent, but would contact Respondent by e-mail to urge Respondent to provide the documents and information requested by the staff. Respondent has not provided the documents and information. Complaint ¶ 13.

The foregoing facts, deemed admitted pursuant to Rule 9215(f) and 9269, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

IV. Respondent Violated NASD Conduct Rules 3030 and 2110 by Engaging in Outside Business Activities Without Providing Written Notice to his Member Firm

Rule 3030 provides that no member or person associated with a member "shall be employed by, or accept compensation from, any other person as a result of any business activity ... outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member."

On February 4, 2003, LPL customer D.S. named Respondent as executor of her estate and successor trustee of her trust. At the time of his appointment, Respondent understood that he would receive compensation when he was required to perform the duties of executor and trustee. LPL's procedures required written notice of outside business activities, and written approval by LPL, before a representative could engage in such activities. Respondent never notified LPL that he had accepted the appointment to serve as the executor of D.S.'s estate, and never received written approval from LPL. Complaint ¶¶ 17-19, 22-23.

D.S. died in January 2009, and Respondent began to perform the duties of executor of her estate and trustee of her trust. He did not notify LPL that he had assumed the responsibilities of executor and trustee, and did not receive written approval from LPL. Respondent received compensation for performing the duties of executor and trustee. Complaint ¶¶ 20-21, 25.

D.S.'s heirs filed a lawsuit against Respondent, which resulted in a default judgment against Respondent for \$851,985.81. The judgment included compensation for various substantial diversions of funds from D.S.'s accounts, her trust, and her estate, including substantial withdrawals by Respondent from D.S.'s LPL account and annuity account, use of funds from D.S.'s checking account for Respondent's personal expenses after D.S.'s death, and

diversion of annuity funds from D.S.'s grandchildren to Respondent's family by substituting Respondent's wife and children as beneficiaries. Complaint ¶ 26.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Conduct Rules 3030 and 2110 by accepting appointment and acting as executor of D.S.'s estate and trustee of D.S.'s trust and accepting compensation for performing those duties.

V. Sanctions

A. Sanctions for Failure to Provide Documents and Information

For complete failure to provide documents or information in response to a Rule 8210 request, a bar is standard. A bar is also standard for a partial response unless the person can demonstrate that the information provided substantially complied with all aspects of the request.³ Respondent did not substantially comply with all aspects of the requests. He provided only partial information, and provided no documents. There are no mitigating factors. A bar is the appropriate sanction.

B. Sanctions for Engaging in Outside Business Activities Without Providing Written Notice

For engaging in outside business activities without providing prompt written notice to a representative's firm, the FINRA Sanction Guidelines ("Guidelines") recommend a suspension of up to 30 business days. In egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm, the Guidelines recommend consider of a longer suspension or a bar.

The principal considerations applicable to NASD Conduct Rule 3030 support a maximum sanction. There are two substantial aggravating factors, and no mitigating factors.

³ FINRA Sanction Guidelines at 33 (2011).

The outside activity involved a customer of the firm. Principal Consideration 1. The activity resulted in substantial injury to the trust and estate, and to D.S's heirs. Principal Consideration 2.

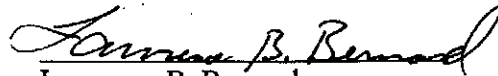
Respondent's conduct was especially egregious, and bar is the appropriate sanction.

VI. Conclusion

Respondent Alan English Smith is barred from associating with any FINRA member firm in any capacity for providing partial responses to requests for information, and failing to provide requested documents, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

Respondent is also barred for engaging in outside business activities without providing prompt written notice to his firm, in violation of NASD Conduct Rules 3030 and 2110.

The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Alan English Smith (*via overnight courier and first-class mail*)
Mark A. Graves, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Alan English Smith
(CRD No. 2201854),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080149617

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Alan English Smith failed to fully provide information and documentation requested by staff pursuant to FINRA Rule 8210 on two occasions during 2009. Smith also engaged in outside business activities without providing prompt written notification to his member firm.

RESPONDENT AND JURISDICTION

2. Alan English Smith entered the securities industry on or about June 25, 1990, as an associated person of a member of FINRA. He became registered as a General Securities Representative (GS) on or about February 13, 1992, and as a General Securities Principal (GP) on or about February 27, 1997. From on or about July 9, 1996, until on or about September 4, 2008, he was registered with FINRA member firm LPL Financial Corporation as a GS and GP. Following the termination of his

association with LPL, Respondent Smith was associated with another FINRA member broker-dealer until September 4, 2009.

3. Respondent Smith has not registered or associated with another member firm since he terminated his most recent association with a member firm in September 2009.
- FINRA has jurisdiction to issue this Complaint until September 3, 2011, pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION

(FAILURE TO FULLY AND COMPLETELY RESPOND TO RULE 8210 REQUESTS FOR INFORMATION (FINRA RULES 2010 AND 8210))

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. Staff commenced an investigation of Smith following the termination of his association and registration with LPL. In the initial Uniform Termination Notice for Securities Industry Registration (Form U5), LPL disclosed that Smith had been discharged from LPL because the "firm reviewed evidence that [Smith] failed to disclose activities in violation of firm policies and procedures, including (1) serving as customer's executor and trustee; (2) executing transactions in customer's account after death and failing to notify LPL of ongoing probate litigation with customer's heirs and of allegations that [Smith] misappropriated customer's assets by making withdrawals from her account after her death."
6. FINRA staff sent a letter to Smith on or about June 19, 2009 (First Letter), requesting information about the reason for his discharge from LPL. The staff requested the information pursuant to FINRA Rule 8210. The First Letter was sent by regular first class mail to Smith's residential address as listed in the Central Registration

Depository (CRD): [REDACTED]

with a copy to the FINRA member firm that he was associated with at the time. The First Letter required Smith to provide the requested information on or before July 3, 2009.

7. On or about August 26, 2009, the staff received a letter dated August 25, 2009, in which Smith's attorney responded to some of the questions asked in the First Letter. No supporting documents were attached to the letter; however, Smith's attorney invited the staff to come to his office to view the documents.
8. The staff telephoned Smith's attorney to schedule a time to view the documents responsive and relevant to the First Letter, but learned that his attorney did not actually have any of the documents. It was agreed that counsel would arrange to have Smith bring the documents to FINRA's office for review by the staff.
9. After multiple subsequent conversations between Smith's counsel and the staff, counsel advised the staff that Smith was not returning his telephone calls and that he could not obtain production of the requested documents either to himself or to the staff.
10. On or about December 15, 2009, the staff sent a second request for information to Smith at his CRD Address (Second Letter). Because Smith was no longer associated or registered with any FINRA member firm, the staff could not send a copy to an employing broker-dealer. The request was sent pursuant to FINRA Rule 8210, via first class mail and certified mail, return receipt requested. The Second Letter required Smith to provide the requested information on or before December 22, 2009.

11. On or about December 17, 2009, the staff received a certified mail delivery receipt evidencing that "A. Smith" accepted delivery of the Second Letter.
12. Although Smith called the staff several times after receiving the Second Letter, purportedly to make arrangements to bring the documents to FINRA's offices, he failed to provide the staff with the documents and information requested in the First and Second Letters.
13. On or about April 23, 2010, the staff contacted Smith's attorney to discuss Smith's failure to produce the documents and information requested pursuant to Rule 8210. Counsel represented that he no longer represented Smith, but stated that he would contact Smith by email to urge him to provide the documents and information requested in the First and Second Letters. To date, the staff has not received the requested documents and information.
14. The staff determined that the conduct leading to Smith's termination included the possible conversion of customer securities and other customer assets. Because of Smith's failure to provide all of the information and documentation requested by the staff, the staff was unable to investigate these serious potential violations and determine the propriety of disciplinary action related to such conduct.
15. Each failure to provide any or all of the information requested by FINRA staff pursuant to FINRA Rule 8210 in the First and Second Letters, as set forth in paragraphs 5-14 above, constitutes a separate and distinct violation of FINRA Rule 8210 by Respondent Smith. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of FINRA Rule 2010 by Respondent Smith.

SECOND CAUSE OF ACTION
(OUTSIDE BUSINESS ACTIVITIES (NASD RULES 3030 AND 2110))

16. The Department realleges and incorporates by reference paragraphs 1-3 and 5-15 above.
17. LPL customer DS named Smith as Executor of her estate through her last will and testament, executed on or about February 4, 2003. At the time of his appointment, Smith understood that he would receive compensation at such time as he was called upon to carry out the duties of an Executor. Smith never provided notice to LPL that he had accepted the appointment to serve as DS's Executor.
18. LPL customer DS also named Smith as Successor Trustee of her trust on or about February 4, 2003. At the time of his appointment, Smith understood that he would receive compensation at such time as he was called upon to carry out the duties of Trustee of DS's trust. Smith never provided notice to LPL that he had accepted the appointment to serve as Successor Trustee of DS's trust.
19. LPL was never aware of Smith's appointments as Executor of DS's estate and Successor Trustee to DS's trust and, therefore, never provided Smith with written approval to act in these capacities.
20. On or about January 29, 2007, DS died. Smith assumed the responsibilities of Executor of DS's estate and Trustee of her trust.
21. Smith failed to provide to LPL written notice that he had assumed the responsibilities of Executor of DS's estate and Trustee of DS's trust and, therefore, LPL never provided Smith with written approval to act in these capacities.

22. During the entire period that Smith was associated and registered with LPL, LPL prohibited its representatives from engaging in any outside business activity, compensated and non-compensated, without prior written notice to the firm and written approval from LPL.
23. LPL also prohibited its representatives from acting as "custodian, trustee, successor trustee, co-trustee, power of attorney or executor of a customer account without written approval of LPL's Compliance Department."
24. At the time he accepted the appointments of Successor Trustee of customer DS's trust and Executor of DS's estate, and during the period that he served in those capacities, Smith knew that he was required by NASD Rule 3030 and LPL's policies to provide notice of his outside business activity to LPL. Smith's knowledge of these requirements is evidenced by the facts that, on or about November 11, 1996, and on or about January 12, 2008, Smith provided LPL with written requests for permission to engage in an outside business activity unrelated to the allegations herein. LPL provided Smith with written approval to engage in such outside business activities.
25. Smith received compensation from DS's estate for acting as Executor of her estate and/or Trustee of her trust. Although Smith, through counsel, acknowledged the receipt of compensation, he failed to provide documentation sufficient to allow the staff to determine with accuracy the amount of compensation he received for these services.

26. DS's heirs filed a lawsuit against Smith in probate court, which resulted in a default judgment against Smith in the amount of approximately \$851,985.81. The court found that, due to extensive pretrial proceedings, communications and mediations, Smith had personal knowledge of the date and time of trial, but failed to appear without notice to the court or to the heirs. The judgment amount included approximately \$250,000.00 that had been withdrawn from DS's LPL account, \$40,000.00 that was transferred into DS's personal checking account prior to her death, but spent by Smith after her death, \$95,485.81 withdrawn from DS's annuity account and spent by Smith after her death, \$80,000.00 that Smith wrongfully redirected by substituting his wife and children for DS's grandchildren as 50% beneficiaries on an annuity, \$350,000.00 for breach of Smith's fiduciary duty as Executor and/or Trustee and \$36,500.00 for attorney fees and costs incurred by the heirs.

27. On or about August 21, 2008, LPL was first informed of DS's death by counsel representing her family.

28. Engaging in outside business activity without providing prompt written notice to LPL, as described in paragraphs 17 – 27 above, constitutes separate and distinct violations of NASD Rule 3030 by Respondent Smith. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Rule 2110 by Respondent Smith.

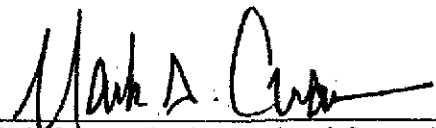
RELIEF REQUESTED

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.
- 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 21, 2010


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