

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EVAN SETH ROSENFELD (CRD No.
2788398),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008015395601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On August 6, 2008, while registered through Whitaker Securities, LLC (BD# 121465), Respondent Rosenfeld executed or caused to be executed three unauthorized day trades in the account of a customer, B.M., resulting in losses of approximately \$57,000. As a result, Respondent violated NASD Conduct Rule 2110.
2. Respondent Rosenfeld executed the three August 6, 2008 transactions, or caused the transactions to be executed, without reasonable grounds for believing that the transactions were suitable based on B.M.'s financial situation, investment objectives and needs. As a result, Respondent violated NASD Conduct Rules 2310 and 2110.
3. In addition, Rosenfeld failed to appear for an on the record interview pursuant to FINRA staff's Rule 8210 requests sent to him on August 27, 2009, September 21,

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2009, and December 17, 2009, respectively. As a result, Respondent violated FINRA Rules 8210 and 2010.

RESPONDENT(S) AND JURISDICTION

4. Respondent first became registered in July 1996 as a general securities representative (GSR) through a member firm.
5. From March 17, 2006 through August 18, 2008, Respondent was registered with Whitaker Securities as a GSR. On or about August 19, 2008, Whitaker filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA, notifying FINRA that the firm had terminated Respondent's association with Whitaker. Respondent is not currently registered through a member firm, but remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

(Unauthorized Trading (NASD Conduct Rule 2110))

6. The Department realleges and incorporates by reference paragraphs 5 above.
7. In September 2006, B.M. opened an account with Whitaker Securities and Rosenfeld. The new account form for B.M.'s account states that B.M. was married, had 20 years of experience investing in stocks, had an annual income of \$250,000 – \$500,000 and maintained liquid net worth of \$125,000 – \$249,999. The new account form indicated that his investment objectives were speculation and short term growth with high risk.

8. B.M.'s account maintained a total value of \$24,382.68, \$38,368.31 and \$23,423.95 on September 30, 2006, September 30, 2007 and July 31, 2008, respectively.
9. On August 6, 2008, Respondent executed, or caused to be executed, three day trades in B.M.'s account without B.M.'s prior knowledge, authorization or consent: (i) a short sale of 27,911 shares of RIMM, the net amount of which totaled \$3,545,278.17; (ii) a short sale of 60,000 shares of RIMM, the net amount of which totaled \$7,530,102.08; and (iii) a purchase and sale of 60,000 shares of RIMM, the net amount of which totaled \$7,628,264.00.
10. These positions were each closed out the same day they were opened. The total loss sustained in B.M.'s account from the trades was \$57,238.26.
11. The foregoing conduct by Respondent violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Qualitative Unsuitability
(NASD Conduct Rules 2310 and 2110
and Interpretive Material (IM)-2310-2(1).))

12. The Department realleges and incorporates by reference paragraphs 11 above.
13. Respondent executed the three August 6, 2008 transactions, which involved transactions totaling \$3,545,278.17, \$7,530,102.08 and \$7,628,264.00, or caused the transactions to be executed. At the time Respondent executed or caused the trades to be executed, B.M.'s account had net equity of approximately \$24,000. This equaled three-tenths (0.3%) of one percent to seven-tenths (0.7%) of one percent of the value of positions traded. Respondent was without reasonable grounds for believing that

the transactions were suitable based on B.M.'s financial situation, investment objectives and needs.

14. By reason of the foregoing, Respondent violated NASD Conduct Rules 2310 and 2110 and IM-2310-2(1).

THIRD CAUSE OF ACTION

(Complete Failure to Provide Information (FINRA Procedural Rule 8210 and Conduct Rule 2010))

15. The Department realleges and incorporates by reference paragraphs 14 above.
16. On or about August 27, 2009, FINRA staff sent a letter to Respondent pursuant to FINRA Rule 8210 requesting that he appear for an on the record interview (OTR) scheduled for October 14, 2009. On or about September 11, 2009, Respondent requested that FINRA postpone the OTR until November 11, 2009.
17. On or about September 21, 2009, FINRA staff sent a second letter to Respondent pursuant to FINRA Rule 8210 requesting that he appear for an OTR on November 11, 2009. On or about November 5, 2009, Respondent's counsel asked FINRA to postpone the OTR to discuss a resolution of the matter.
18. After further conversations, Respondent's counsel agreed that Respondent would appear for his OTR on January 28, 2010. Accordingly, on or about on December 17, 2009, FINRA staff sent a third letter to Respondent pursuant to FINRA Rule 8210 requesting that he appear for an OTR on January 28, 2010.
19. On or about January 12, 2009, Respondent informed FINRA staff that he was no longer represented by counsel and that he would not appear for his January 28, 2010 OTR.

20. To date, Respondent has not appeared for an OTR.

21. The foregoing conduct by Respondent violated FINRA Rules 8210 and 2010

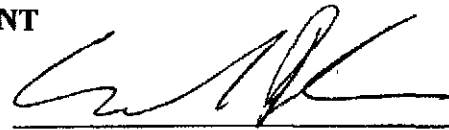
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, 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: July 21, 2010



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