

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Ryan Seth Sackstein (CRD No. 4304667),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080159146

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT AND JURISDICTION

1. In March 2007, Respondent Ryan Seth Sackstein ("Respondent") became a registered representative with Investors Capital Corporation ("ICC" or the "Firm"), a FINRA regulated entity. On November 25, 2008, the Department of Enforcement ("Enforcement") of FINRA received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") from ICC reporting that Respondent's employment with the Firm had been terminated the same day and that at the time of his termination, Respondent was under investigation for unauthorized trading.

2. On February 4, 2009, FINRA received an Amended Form U-5 from ICC reporting that customer JS filed a complaint with the Firm alleging unauthorized trading by Respondent.

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3. To date, Respondent has not re-entered the securities industry.

4. Although Respondent has not been associated with a FINRA member firm since November 25, 2008, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction for purposes of this proceeding because: (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member firm, (2) the Complaint was filed within two years of the filing of an Amended Form U-5 that discloses that Respondent may have engaged in unauthorized trading in a customer account, and (3) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

OVERVIEW

5. Respondent executed unauthorized trades in a customer's accounts and failed to cooperate with FINRA's request for testimony.

FIRST CAUSE OF ACTION UNAUTHORIZED TRADING (NASD RULE 2110)

6. The Department realleges and incorporates by reference paragraphs 1-4 above.

7. Customer JS had two commission-based accounts at ICC: [REDACTED] ("Account A") and [REDACTED] ("Account B").

8. Account A was opened on or about February 15, 2008.

9. Account B was opened on or about January 15, 2008.

10. Between January 15, 2008 and October 27, 2008, both accounts were managed solely by Respondent.

11. On February 11, 2008, pursuant to Respondent's request, JS signed a written agreement, drafted by Respondent on the Firm's letterhead, which authorized Respondent to exercise discretion in sale transactions in Account B. This written agreement was also signed by Respondent.

12. The Firm's policies and procedures prohibited commission-based discretionary accounts, absent exceptional circumstances.

13. Respondent did not notify the Firm about this agreement or obtain approval from the Firm to exercise discretion in JS's account.

14. On or about September 16, 2008, JS told Respondent to "stop all trading in [JS's] account".

15. Despite this instruction, as seen below, from on or about September 22, 2008 until on or about October 28, 2008, Respondent executed unauthorized trades in Account A and Account B.

16. On September 22, 2008, Respondent caused 2,000 shares of New Gold Inc. ("NGD") to be purchased in Account A, and 1,000 shares of MF Global Holdings Ltd. ("MF") to be purchased in Account B.

17. On September 23, 2008, Respondent caused 1,000 additional shares of NGD to be purchased in Account A.

18. On September 25, 2008, Respondent caused 1,000 shares of Washington Mutual Inc. ("WM") to be purchased in Account A, and 2,000 shares of WM to be purchased in Account B.

19. On October 14, 2008, Respondent caused 3,000 shares of Akeena Solar, Inc. ("AKNS") to be purchased in Account B. On the same day, Respondent caused 2,000 shares of WM to be sold out of Account B.

20. On October 20, 2008, Respondent caused 2,000 shares of Hecla Mining Co. ("HL") to be purchased in Account B.

21. On October 22, 2008, Respondent caused 1,000 shares of iStar Financial Inc. ("SFI") to be purchased in Account B, and 1,500 shares of NGD to be sold out of Account A.

22. On October 27, 2008, Respondent caused 1,500 shares of NGD to be sold out of Account A.

23. On October 27, 2008 and October 28, 2008, Respondent caused 2,000 shares of HL and 3,000 shares of AKNS to be sold out of Account B.

24. Firm records indicate that the orders to purchase and sell shares in JS's accounts were entered into the Firm's order entry system using Respondent's Firm assigned username and password.

25. In late September 2008, when JS began to receive trade confirmations for these trades, which JS did not authorize, JS attempted to contact Respondent to discuss the transactions. JS was unable to reach Respondent but left numerous messages at Respondent's office and on Respondent's cellular telephone.

26. On or about October 27, 2008, after failing to hear from Respondent, JS contacted Respondent's supervisor at ICC to complain about the unauthorized trades, and requested that all trading be halted in JS's accounts and that Respondent be removed as the assigned registered representative.

27. As a result of the foregoing conduct, Respondent violated NASD Conduct Rule 2110 by engaging in unauthorized trading in a customer's account.

**SECOND CAUSE OF ACTION
FAILURE TO COOPERATE
(FINRA PROCEDURAL RULE 8210 AND FINRA CONDUCT RULE 2010)**

28. The Department realleges and incorporates by reference paragraphs 1-4 above.

29. On December 4, 2008, FINRA staff sent a letter to Respondent, pursuant to FINRA Rule 8210, notifying him of its investigation and requesting a signed written statement regarding the allegations of unauthorized trading claims and the circumstances of his termination of employment from the Firm. The written statement was due by January 3, 2009.

30. The letter was sent via certified mail and return receipt requested to Respondent at [REDACTED] ("Sutton Lane") which was his last known residential address as reflected in the Central Registration Depository ("CRD"). A copy of the letter was sent by first class mail to the same address. The letter sent by certified mail and return receipt requested was returned to FINRA marked "Unclaimed – Unable to Forward" and "Notify Sender of New Address – Sackstein, Ryan S. – [REDACTED] ("Ann Drive"). The letters sent via first class were not returned to FINRA. Respondent did not respond to the requests for information.

31. On January 8, 2009, FINRA staff sent a letter to Respondent which renewed its request that, pursuant to FINRA Rule 8210, Respondent provide a written statement regarding the allegations of unauthorized trading and the circumstances of the termination of his employment from the Firm. The response to FINRA's request for information was due on or before January 22, 2009. The letter was sent via *certified mail* and return receipt requested to the

Sutton Lane address and to [REDACTED] ("Sagamore Road"), which was an address linked to Respondent through an online database search. Copies of the letter were sent to Respondent via first class mail to both of these addresses. The letters sent to Respondent at these two addresses via certified mail and return receipt requested were returned to FINRA and marked "Unclaimed – Unable to Forward." The letters sent via first class were not returned to FINRA. Respondent did not respond to the requests for information.

32. On February 20, 2009, FINRA staff sent a letter to Respondent, pursuant to FINRA Rule 8210, which renewed its request for a written statement regarding the allegations of unauthorized trading and the circumstances of his termination. The response to FINRA's request for information was due on or before February 27, 2009. The letter was sent to Respondent via certified mail and return receipt requested to the Ann Drive address. A copy of the letter was sent to via first class mail to the same address. FINRA received the return receipt, which was signed "Starr Sackstein" on February 26, 2009. The letter sent via first class mail was not returned to FINRA. Respondent did not respond to the requests for information.

33. On April 13, 2009, Enforcement sent a letter to Respondent requesting that, pursuant to FINRA Rule 8210, Respondent provide a written statement regarding the allegations of unauthorized trading and the circumstances of his termination of employment from the Firm. The letter was sent by certified mail and return receipt requested to the Sutton Lane, Ann Drive, and Sagamore Road addresses. The response to FINRA's request for information was due by April 27, 2009. Copies of the letter were sent by first class mail to the three addresses above. The letters that were sent by certified mail and return receipt requested to the Ann Drive and Sagamore Road addresses were returned to FINRA and marked "Unclaimed." The letter sent to Sutton Lane via certified mail and return receipt requested was marked "Forwarding Order

Expired.” The letters sent via first class mail were not returned to FINRA. Respondent did not respond to the requests for information.

34. On May 14, 2009, Enforcement sent a letter to Respondent requesting that, pursuant to FINRA Rule 8210, Respondent provide on-the-record testimony at FINRA’s office located at 14 Wall Street, 14th floor in New York City on May 28, 2009 at 10:00 a.m., Eastern Standard Time. The letter was sent by certified mail and return receipt requested to the Sutton Lane, Ann Drive, and Sagamore Road addresses. Copies of the letter were sent by first class mail. All of the letters were returned to FINRA, except for the letter sent via first class mail to the Ann Drive address.

35. On May 19, 2009, Respondent replied to FINRA’s requests for information for the first time via telephone. During this telephone conversation, Respondent said he was currently in Arizona and that his sister had called him about the letter from Enforcement. Respondent provided the email address [REDACTED] as his contact information. Respondent refused to provide his current mailing address.

36. On May 19, 2009, Enforcement sent a letter to Respondent to the [REDACTED] email address requesting that, pursuant to FINRA Rule 8210, Respondent provide the information requested in FINRA’s April 13, 2009, letter to Respondent. Enforcement attached a copy of its April 13, 2009 letter and stated that Respondent’s reply was due on or before June 2, 2009. On May 20, 2009, Enforcement emailed Respondent to cancel the scheduled May 28, 2009 on-the-record testimony in lieu of the written statement.

37. On June 2, 2009, the due date of the written statement, Enforcement sent a letter to Respondent via email to ascertain when Respondent would respond to Enforcement’s request for information. On the same day, Respondent replied via email that he was unsure about the

facts surrounding the transactions in question and that he had “never done anything wrong with a client in [his] entire career.” Respondent stated that he was never told which clients had claimed unauthorized trading activity in their accounts and that he has not had access to ICC client accounts since November 2008. Respondent also stated that he had been working from Arizona since May 2008 with permission from his manager, who also had access to Respondent’s client accounts.

38. On June 4, 2009, Enforcement sent a letter to Respondent via email requesting that, pursuant to FINRA Rule 8210, Respondent provide a written statement regarding the allegations of unauthorized trading and the circumstances surrounding his termination of employment from the Firm. The letter instructed Respondent to provide the requested information on or before June 8, 2009.

39. Respondent replied via email that day with his recollection of the facts surrounding the termination of his employment from ICC. Respondent stated that he called his manager when he could not access his back office account and at that point was notified that his employment had been terminated. Respondent also stated that he was notified of FINRA’s investigation by his sister who received his mail.

40. On March 1, 2010, Enforcement sent a letter to Respondent via email inquiring about his availability to give on-the-record testimony in March 2010. On March 3, 2010, Enforcement sent a letter to Respondent via email renewing its request for his availability so the on-the-record testimony could be scheduled. That day, Respondent replied via email indicating that he was willing to give on-the-record testimony.

41. On March 5, 2010, Enforcement sent a letter, via email, requesting that, pursuant to FINRA Rule 8210, Respondent provide on-the record testimony at FINRA’s office at 14 Wall

Street, 14th floor in New York City. That day, Respondent replied via email indicating his unwillingness to travel to New York, citing an inability to cover the cost of a trip to New York. At Enforcement's request, Respondent provided his telephone number.

42. Enforcement then contacted Respondent, via telephone, to schedule Respondent's on-the-record testimony. During the conversation, Respondent stated he was not willing to travel to the FINRA offices in New York or Denver, Colorado, but that he was available for on-the-record testimony in either Tucson or Phoenix, Arizona on April 6, 2010 or April 7, 2010. Respondent refused to provide his Arizona address and stated that he did not anticipate returning to work in the securities industry.

43. On March 15, 2010, Enforcement sent a letter to Respondent requesting that, pursuant to FINRA Rule 8210, Respondent appear at Driver and Nix Court Reporters, which is located at 3131 East Clarendon Avenue, Suite 108, Phoenix, Arizona, 85016 on April 6, 2010 at 9:30 a.m., Mountain Standard Time, to provide testimony regarding the allegations of unauthorized trading and the circumstances of his termination of employment from the Firm. The letter was sent by certified mail and return receipt requested to the Sutton Lane, Sagamore Road, and Ann Drive addresses. Copies of the letter were also sent to these addresses by first class mail and to Respondent's e-mail address at [REDACTED]. The letters sent to Sutton Lane and Sagamore Road via certified mail and return receipt requested were returned to FINRA and marked "Unclaimed." The letter sent to Ann Drive via certified mail and return receipt requested was not returned. The copies of the letter sent by first class mail or by e-mail were not returned.

44. On March 30, 2010, March 31, 2010 and April 1, 2010, Enforcement sent emails to Respondent to confirm the upcoming date for testimony but did not receive a response.

During the same period, Enforcement also left voice mail messages at Respondent's cellular telephone number for Respondent to confirm the testimony but did not receive a response.

45. On April 6, 2010, Respondent failed to appear and provide the requested testimony and to date, has not contacted Enforcement regarding his on-the-record testimony.

46. As a result of the foregoing conduct, Respondent violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2110 by failing to appear and provide testimony to FINRA.

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; 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:

9/27/10


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