

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RYAN SETH SACKSTEIN
(CRD No. 4304667),

Respondent.

Disciplinary Proceeding
No. 20080159146

Hearing Officer – LBB

DEFAULT DECISION

February 11, 2011

Respondent is barred for executing unauthorized trades in a customer's account, in violation of NASD Conduct Rule 2110. Respondent is also barred for failing to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Conway Lee, Esq., Principal Counsel, New York, NY, for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the two-cause Complaint in this disciplinary proceeding on September 27, 2010, against Respondent Ryan Seth Sackstein ("Respondent"). The First Cause of Action charges Respondent with executing an unauthorized

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trade in a customer's account, in violation of NASD Conduct Rule 2110.¹ The Second Cause of Action charges Respondent with failing to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. 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.

On December 20, 2010, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted and Enforcement's motion is granted.²

I. Respondent's Default

On September 27, 2010, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail, first-class mail, and e-mail.³ The mailings were sent to Respondent's address as listed in the Central Registration Depository ("CRD address") and two additional possible mailing addresses for Respondent. Decl. ¶¶ 47, 48. The Postal Service returned the certified mailings and one of the first-class mailings, marked unclaimed. Decl. ¶¶ 49-51. The mailings sent by first-class mail to the CRD address and one of the alternative addresses were not

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). For the First Cause of Action, this decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. This decision refers to and relies on the FINRA Conduct Rules for the Second Cause of Action.

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 included the Declaration of Conway Lee in Support of Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited as "CX-____."

³ As discussed below, Respondent refused to provide a current mailing address, but requested that Enforcement communicate with him by e-mail.

returned. Decl. ¶ 52. Respondent has not answered or otherwise responded to the Complaint.

Decl. ¶ 54.

On October 28, 2010, Enforcement served the Complaint, Notice of Complaint, and Second Notice of Complaint on Respondent by certified mail, first-class mail, and e-mail. The mailings were again sent to Respondent's CRD address and two additional addresses. The Postal Service returned all three certified mailings, and the first-class mailing to Respondent's CRD address. Two of the first-class mailings were not returned by the Postal Service. Decl. ¶¶ 57-60. Respondent has not answered or otherwise responded to the Complaint. Decl. ¶¶ 61-62.

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

II. Jurisdiction

Respondent entered the securities industry with a FINRA member firm in 2002. CX-2. He became a registered representative with FINRA member firm Investors Capital Corporation ("the Firm") in March 2007, and was registered with that firm until November 28, 2008, when the Firm terminated his employment. The Firm filed a Form U5 notifying FINRA of the termination of Respondent's employment while he was under investigation by the Firm for unauthorized trading. Respondent has not re-entered the securities industry. Complaint ¶¶ 1, 4.

Although Respondent is not registered with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his registration with a member firm, and it charges him with misconduct while he was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

III. Violations

A. Unauthorized Trading, in Violation of NASD Conduct Rule 2110

The First Cause of Action alleges that Respondent executed an unauthorized trade in the account of customer J.S. Unauthorized trading is a “serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade,” and violates NASD Conduct Rule 2110.⁴

J.S. had two commission-based accounts at the Firm, both opened in early 2008 and managed solely by Respondent until October 27, 2008. Complaint ¶¶ 7-10. On February 11, 2008, pursuant to Respondent’s request, J. S. signed a written agreement that Respondent had drafted on the Firm’s letterhead, authorizing Respondent to exercise discretion in sale transactions in one of the accounts. Respondent also signed the agreement. Complaint ¶ 11. The Firm’s policies and procedures prohibited commission-based discretionary accounts absent exceptional circumstances. Respondent did not notify the Firm about his agreement with J.S. or obtain approval from the Firm to exercise discretion in J.S.’s account. Complaint ¶¶ 12-13.

On September 16, 2008, J.S. told Respondent to stop all trading in his accounts. Complaint ¶ 14. Despite this instruction, Respondent made 13 unauthorized trades in J.S.’s accounts, trading on eight different days between September 22 and October 28, 2008. Complaint ¶¶ 15-25. When J.S. received confirmations for these trades, he attempted to contact Respondent, but was unsuccessful despite leaving numerous messages for Respondent. J.S. contacted the Firm about the unauthorized trades, requested that all trading in his accounts be stopped, and requested the removal of Respondent as the registered representative on the accounts. Complaint ¶ 26.

⁴ *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008) (citation omitted); *Dep’t of Enforcement v. Wiard*, No. C8A030078, 2005 NASD Discip. LEXIS 45, at *8 (N.A.C. Oct. 18, 2005).

The allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent made unauthorized transactions in J.S.'s account, and thereby violated Conduct Rule 2110.

B. Failure to Appear and Testify at an On-the-Record Interview, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010

The Second Cause of Action charges Respondent with failing to respond to requests to testify at an on-the-record interview that were issued pursuant to FINRA Rule 8210. Beginning in December 2008, Enforcement sent several requests for information to Respondent at several addresses in New York, including Respondent's CRD address, requesting a signed written statement concerning the facts surrounding the alleged unauthorized trading. In addition, on May 14, 2009, Enforcement requested that Respondent appear to provide on-the-record testimony in New York on May 28. On May 19, 2009, Respondent informed Enforcement that he was in Arizona and no longer lived at any of the addresses where the requests had been sent.⁵ Respondent refused to provide a current mailing address, but he provided an e-mail address. Complaint ¶¶ 29-35.

On May 19, Enforcement sent an e-mail to Respondent, requesting that he provide the information Enforcement had previously requested by mail. On May 20, Enforcement sent an e-mail to Respondent canceling the on-the-record testimony that had been scheduled for May 28. Complaint ¶ 36. Respondent sent a reply e-mail stating that he was unsure of the facts surrounding the allegedly unauthorized transactions; that he had not done anything wrong; that he had not been told which client had made the allegations of unauthorized trading; and that he had not had access to the Firm's client accounts since November 2008. Respondent also stated that he had been working from Arizona since May 2008, with his manager's permission. Complaint ¶ 37.

⁵ Respondent's sister had contacted him regarding a request that was sent to the address where she lived.

Enforcement sent another e-mail to Respondent on June 4, 2009, pursuant to Rule 8210, directing Respondent to provide a written statement concerning the allegations of unauthorized trading and the circumstances of his termination of Respondent's employment from the Firm. Respondent replied the same day with his recollection of the facts surrounding the termination of his employment. He stated that he had 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 had been notified of FINRA's investigation by his sister, who received his mail. Complaint ¶ 39.

On March 1 and again on March 3, 2010, Enforcement sent e-mails to Respondent inquiring about his availability to testify at an on-the-record interview in March 2010. Respondent replied on March 3, stating that he was willing to testify. Complaint ¶ 40. Enforcement sent an e-mail to Respondent on March 5, pursuant to Rule 8210, requesting that he appear in New York to testify. Respondent replied that he was unwilling and financially unable to travel to New York. At Enforcement's request, Respondent provided his telephone number. Complaint ¶ 41.

Enforcement contacted Respondent by telephone to schedule the on-the-record testimony. Respondent again said he would not travel to New York, but would testify in Tucson or Phoenix on April 6 or 7. He continued to refuse to provide his Arizona address. Complaint ¶ 42. On March 15, 2010, Enforcement sent a letter to Respondent by certified and first-class mail to Respondent's CRD address and two alternative addresses, as well as by e-mail, requiring Respondent to provide testimony concerning the allegations of unauthorized trading and the circumstances of the termination of his employment. The letter directed Respondent to appear for the on-the-record interview in Phoenix on April 6, 2010. The letters sent by certified mail to the CRD address and one of the alternative addresses were returned unclaimed. Neither the letter nor the certified receipt

sent to the other additional address was returned. The letters sent by first-class mail were not returned. Complaint ¶ 43. On March 30, March 31, and April 1, 2010, Enforcement sent e-mails to Respondent and left voicemail messages on his telephone confirming the upcoming testimony. Complaint ¶ 44. Respondent failed to appear and testify at the on-the-record interview in Phoenix on April 6, 2010, and has not contacted Enforcement regarding his testimony. Complaint ¶ 45.

Respondent was required to appear and testify at the interview pursuant to FINRA Rule 8210, yet he failed to do so. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210. A violation FINRA Rule 8210 is also a violation of FINRA Conduct Rule 2010.⁶

IV. Sanctions

A. Unauthorized Trading

For executing an unauthorized transaction in a client's account, the FINRA Sanction Guidelines ("Sanction Guidelines") recommend a fine of \$5,000 to \$75,000 and a suspension of 10 business days to one year. In egregious cases, the Sanction Guidelines recommend a longer suspension or a bar. The principal considerations are whether respondent misunderstood his authority or the terms of the customer's orders, and whether the unauthorized trading was egregious.⁷

Enforcement does not recommend the imposition of a sanction for this violation because it recommends a bar for the failure to appear and testify at an on-the-record interview. The Hearing Officer finds that Respondent's conduct was egregious, and imposes a bar for unauthorized trading.

⁶ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

⁷ *FINRA Sanction Guidelines* at 103 (2007).

Respondent acted directly contrary to his customer's instructions to stop all trading in the customer's accounts. He made 13 unauthorized trades over the course of a month. There are no mitigating factors. A bar is the appropriate sanction.

B. Failure to Respond to Requests for Information

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.⁸ Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years. Enforcement made extraordinary efforts to obtain necessary information from Respondent, and then further extraordinary efforts to obtain his testimony. Respondent put up roadblocks to communication, then failed to appear at the on-the-record interview at the time and place he selected despite Enforcement's numerous efforts to confirm the interview. There are no mitigating factors that would justify imposition of a lesser sanction. A bar is the appropriate sanction under the facts and circumstances of this case for Respondent's violations of FINRA Procedural Rule 8210 and Conduct Rule 2010.

V. Conclusion

Respondent Ryan Seth Sackstein is barred from associating with any FINRA member firm in any capacity for unauthorized trading, in violation of NASD Conduct Rule 2110. Respondent is also barred for failure to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

⁸ *Sanction Guidelines* at 35.

Copies to:

Ryan Seth Sackstein (*via overnight courier, e-mail, and first-class mail*)

Conway Lee, Esq. (*via e-mail and first-class mail*)

David R. Sonnenberg, Esq. (*via e-mail*)