

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GUY EUGENE RICHARDSON
(CRD No. 2926034),

Respondent.

Disciplinary Proceeding

No. 2008016382401

Hearing Officer – MC

DEFAULT DECISION

September 23, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Because of the imposition of the bar, no additional sanctions are imposed upon Respondent for making negligent misrepresentations in recommendations to customers, in violation of NASD Conduct Rule 2110.

Appearances

Kevin G. Kulling, Senior Regional Counsel, and Mark A. Koerner, Regional Chief Counsel, Chicago, Illinois, for the Department of Enforcement.

No appearance by or on behalf of Respondent Guy Eugene Richardson.

DECISION

The Department of Enforcement filed the attached two-cause Complaint on April 4, 2011. The First Cause of Action charges Respondent Guy Eugene Richardson with negligently making material misrepresentations in his recommendations to four customers, in violation of

000071273 2011

NASD Rule 2110.¹ The Second Cause of Action charges Richardson with failing to respond to requests for information issued to him by FINRA staff pursuant to Rule 8210, in violation of FINRA Rules 2010 and 8210.

Enforcement served the Complaint and Notices of Complaint upon Richardson by certified mail at his most recent residential address as it appears in FINRA's Central Registration Depository ("CRD address"). Richardson failed to respond to the Complaint. Consequently, on June 28, 2011, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Kevin Kulling, with seven exhibits. On July 27, 2011, Enforcement filed a Supplement to Motion and Declaration for Entry of Default Decision.²

I. Findings of Fact and Conclusions of Law

A. Jurisdiction

Richardson began his career in the securities industry in July 1997 with NYLife Securities LLC, where he was registered with FINRA as an Investment Company and Variable Contracts Products Representative until his termination on May 7, 2009. He has not been associated with a FINRA member firm since that date. Pursuant to Article V, Section 4 of FINRA'S By-Laws, however, Richardson remains subject to FINRA's jurisdiction because (i) FINRA filed the Complaint within two years after the termination of his registration with a member firm, and (ii) the Complaint charges him with engaging in misconduct while he was

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). Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. See Regulatory Notice 08-57 (Oct. 2008). FINRA Conduct Rule 2010 replaced NASD Conduct Rule 2110, to which it is identical, as of December 15, 2008. Because Richardson's negligent misrepresentations occurred between approximately February 2006 and June 2008, they violated NASD Conduct Rule 2110. Because Richardson's failures to respond to requests for information occurred between April and May 2010, they violated FINRA Conduct Rule 2010 and Procedural Rule 8210. The rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-__," with the appropriate exhibit and page numbers. The Declaration of Kevin Kulling will be referred to as "Decl." or "Kulling Declaration," and the Supplement to Motion and Declaration for Entry of Default Decision will be referred to as "Supplement to Declaration," with citation to specific paragraphs.

registered with a member firm, and with failing to respond to requests for information that FINRA issued to him within two years following the termination of his registration.³

B. Default

On April 4, 2011, Enforcement served the Complaint and Notice of Complaint upon Richardson at his CRD address by certified and first-class mail. The certified mailing was returned to Enforcement marked “RETURN TO SENDER” but the first-class mailing was not returned.⁴

On or about May 3, 2011, Enforcement served the Complaint and Second Notice of Complaint on Richardson, again by certified and first-class mail at his CRD address. As before, the first-class mailing was not returned. The United States Postal Service’s Track and Confirm website reported that a notice for the certified mailing was left at Richardson’s CRD address on May 5, and the mailing was deemed “Unclaimed” on May 21, 2011.⁵

Richardson has not filed an Answer to the Complaint. By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Richardson by certified mail at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had been filed.⁶ By failing to file an Answer, Richardson

³ Complaint ¶ 2; Decl. ¶ 5; CX-3, p. 2.

⁴ Decl. ¶ 6; CX-5.

⁵ Decl. ¶ 7; CX-7.

⁶ FINRA Procedural Rule 9134(a); *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

defaulted. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.⁷

C. Violations

1. Negligent Misrepresentations

From approximately February 2006 through June 2008, Richardson made similar misrepresentations to at least four customers, all of whom wished to make conservative investments, about a certain corporate bond fund (the “Fund”) that he recommended to them.

The Fund did not provide a guaranteed dividend yield or rate of return. Its objective, as stated in the Fund prospectus, was to seek maximum current income through investment in a diversified portfolio of high-yield debt securities.⁸ In fact, the Fund’s semi-annual report, which it sent to Richardson, stated that the Fund invested in junk bonds for which investors pay a premium because of the increased risk of loss, and that the bonds can be subject to greater price volatility than higher quality debt securities.⁹

Customer TS told Richardson that he wanted a stable and guaranteed investment that would not be subject to market fluctuations. In February 2006, Richardson represented to customer TS that the Fund was a conservative investment with a guaranteed 6.75% rate of return. Relying on Richardson’s representations, TS invested approximately \$180,000 by purchasing shares of the Fund.¹⁰

In approximately July 2007, customer KK told Richardson that he wanted to preserve capital by investing in a product that did not fluctuate in value. Richardson recommended

⁷ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Kulling Declaration, exhibits, and Supplement to Declaration filed by Enforcement.

⁸ Decl. ¶ 9(f).

⁹ Decl. ¶ 9(g).

¹⁰ Decl. ¶ 9(c).

investing in the Fund, and told KK that the investment would return a guaranteed dividend yield of 6.5% per year. Based upon Richardson's representations, KK invested approximately \$62,000 in the Fund.¹¹

In March 2008, customer MA told Richardson that he wanted to invest in a stable and guaranteed investment that would not be subject to market fluctuations. Richardson told MA that an investment in the Fund would not fluctuate with the market and that it guaranteed a 6.5% annual return. Consequently, MA invested \$50,000 to purchase shares in the Fund.¹²

In June 2008, customer RB told Richardson that she wanted to invest funds she was saving for a down payment on a home. Richardson told RB that the Fund guaranteed a 6.5% dividend yield. Relying on this representation, RB invested \$25,000 in the Fund.¹³

Richardson made these misrepresentations without attempting to verify what he told his customers.¹⁴ In an on-the-record interview with FINRA staff, Richardson testified that he believed at the time he made the misrepresentations that the Fund did carry a guaranteed dividend yield, and that he recommended the Fund to the four customers because they wanted a higher return than was available in bank-sponsored products. Richardson admitted further that he did not review the Fund's prospectus or other documents available to him to verify his understanding of its dividend yield, and that he did not fully understand the product.¹⁵

These facts, as alleged in the First Cause of Action of the Complaint, and supported by the Kulling Declaration and the exhibits filed by Enforcement, are sufficient to establish, for the

¹¹ Decl. ¶¶ 9(a), (b).

¹² Decl. ¶ 9(d).

¹³ Decl. ¶ 9(e).

¹⁴ Decl. ¶ 9(h).

¹⁵ Decl. ¶ 10.

purposes of this Default Decision, that Richardson made negligent misrepresentations to four customers, in violation of NASD Conduct Rule 2110.

2. Failure to Respond

FINRA began its investigation into this matter when it learned of several customer complaints about representations Richardson had made in connection with their investments. Seeking to obtain further information, on April 8, 2010, FINRA staff sent a request for information to Richardson pursuant to Rule 8210 at his CRD address by both certified and first-class mail. The certified mailing was returned marked “unclaimed,” but the first-class mailing was not returned.¹⁶

On or about May 7, 2010, FINRA staff sent a second request for information pursuant to Rule 8210 to Richardson at his CRD address, again by certified and first-class mail. As before, the certified mailing was returned marked “unclaimed,” but the first-class mailing was not returned.¹⁷ Richardson did not respond to the requests for information.¹⁸

These facts, as alleged in the Second Cause of Action of the Complaint, and supported by the Kulling Declaration, are sufficient to establish, for the purposes of this Default Decision, that Richardson failed to respond to requests for information issued to him pursuant to Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

II. Sanctions

It is well established that Rule 8210 gives FINRA “the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to

¹⁶ Decl. ¶¶ 11(a) – (c).

¹⁷ Decl. ¶¶ 11(d) – (e), 12.

¹⁸ Complaint ¶ 19.

provide such information.”¹⁹ As for sanctions, “[t]he Guidelines treat a failure to respond ... as egregious.”²⁰

For failing to comply with Rule 8210 requests to provide information and documents, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.²¹

Here, there are no mitigating factors related to Richardson’s failure to provide information. Therefore, Enforcement’s recommendation that Richardson be barred for his failure to provide information as requested pursuant to Rule 8210 is reasonable and necessary to deter him and others from further such serious misconduct.

The Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities for up to 30 business days for making negligent misrepresentations to customers about investments.²² As Enforcement points out, Richardson admittedly made material misrepresentations to the four customers in this case. Negligently doing so, in knowing ignorance of the characteristics of the Fund, constituted unethical conduct and violated Conduct Rule 2110.²³

Enforcement’s recommendation of a 30-day suspension for the negligent misrepresentations is reasonable under these circumstances. In light of the bar imposed for the

¹⁹ *Dep’t of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (N.A.C. Dec. 18, 2006).

²⁰ *Id.* at *41.

²¹ *Guidelines* at 33.

²² *Guidelines* at 90.

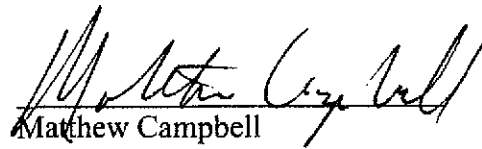
²³ *Dep’t of Enforcement v. Timberlake*, No. C07010099, 2004 NASD Discip. LEXIS 11, at *15-16 (N.A.C. Aug. 6, 2006).

failure to respond to requests for information, however, it is unnecessary to impose additional sanctions.²⁴

III. Order

Respondent Guy Eugene Richardson is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information issued to him pursuant to FINRA Procedural Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210. Because of the imposition of the bar, it is unnecessary to impose any additional sanction upon Richardson for violating NASD Conduct Rule 2110 by negligently making material misrepresentations in recommendations to customers.

If this Decision becomes FINRA's final disciplinary action, the bar shall take effect immediately.


Matthew Campbell
Hearing Officer

Copies to:

Guy Eugene Richardson (*via overnight courier and first-class mail*)
Kevin G. Kulling, Esq. (*via e-mail and first-class mail*)
Mark A. Koerner, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

²⁴ Richardson's employer rescinded the customer investments in the Fund described in the First Cause of the Complaint and repaid the customers, making them whole. Because the customers suffered no loss as a result of Richardson's negligent misrepresentations, there is no need for, and Enforcement does not request, an order for restitution. Supplement to Declaration, ¶ 4.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Guy Richardson
CRD No. 2926034,

Respondents

DISCIPLINARY PROCEEDING
No. 2008016382401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Guy Richardson negligently misrepresented features of an investment to at least four customers and he failed to respond to FINRA staff's requests for information.

RESPONDENT AND JURISDICTION

2. Richardson entered the securities industry in July 1997 as an investment company/variable products representative of NYLife Securities LLC. Although Richardson has not been associated with a FINRA registered firm since May 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA

member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA firm and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA firm.

FIRST CAUSE OF ACTION
Negligent Misrepresentation of Investment
NASD Conduct Rule 2110

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. In or about July 2007, customer KK told Richardson that he wanted to invest in a product that did not fluctuate and that would preserve his capital.
5. Richardson recommended that KK invest in a certain corporate bond fund ("the Fund") that Richardson represented to KK would bring a dividend yield of 6.5% return over the course of a year. Richardson also represented that the Fund's yield was "guaranteed." As a result of Richardson's representations, KK purchased shares of the Fund. KK invested approximately \$62,000 in the Fund.
6. Similarly, in or about February 2006, Richardson represented to customer TS that the same Fund was a "conservative investment" and that there was a "guaranteed" 6.75% return. TS informed Richardson that he wanted a stable and guaranteed investment that would not be subject to market fluctuations. As a result of Richardson's representations, TS purchased shares of the Fund. TS invested approximately \$180,000 in the Fund.
7. In March 2008, customer MA told Richardson that he wanted a stable and guaranteed investment that would not be subject to market fluctuations. Richardson represented

to customer MA that the same high-yield corporate bond Fund would not fluctuate with the market and that it was a 6.5% guaranteed annual return. As a result of Richardson's representations, MA purchased shares of the Fund. MA invested \$50,000 in the Fund.

8. In or about June 2008, customer RB told Richardson that she wanted to invest funds that she was saving for a down payment on a home. Richardson told RB that the Fund had a guaranteed 6.5% dividend yield. As a result of Richardson's representations, RB invested approximately \$25,000 in the Fund with Richardson after he told her that there was a 6.5% guaranteed dividend yield.
9. Contrary to Richardson's representations, the Fund did not have a guaranteed dividend yield or return. According to the Fund prospectus, the Fund's objective was to seek maximum current income through investment in a diversified portfolio of high-yield debt securities.
10. Moreover, the Fund's semi-annual report, which was sent to Richardson, stated that "The Fund invests in high yield debt securities (sometimes called junk bonds), which are generally considered speculative because they present a greater risk of loss, including default, than higher quality debt securities. These securities pay investors a premium—a high interest rate or yield—because of the increased risk of loss. These securities can also be subject to greater price volatility."
11. Richardson negligently made misrepresentations about the Fund without making attempts to verify that what he told the customers about the 6.5% guaranteed dividend yield in the corporate bond fund was accurate.

12. As a result of the foregoing, Richardson negligently misrepresented the investment in the high yield corporate bond Fund to at least four customers, in violation of NASD Rule 2110.

SECOND CAUSE OF ACTION

Failure to Respond

Rules 8210 and 2010

13. The Department realleges and incorporates by reference paragraphs 1-13 above.
14. On or about April 8, 2010, FINRA Staff sent a letter via first class mail and certified mail, return receipt requested, pursuant to Rule 8210, to Richardson's CRD address of record.
15. The Rule 8210 written requests sought information concerning additional customer complaints about representations Richardson made in connection with various investments.
16. The first class letter was not returned and the certified mailing was returned marked, "unclaimed."
17. On or about May 7, 2010, staff sent a second request for information pursuant to Rule 8210 to Richardson's CRD address, seeking information about several additional customer complaints. The request was sent by first class mail and by certified mail, return receipt requested.
18. The first class mailing was not returned and the certified mailing was returned marked, "Unclaimed."

19. To date, Richardson has not responded to the requests for information and the deadline for responding has passed.

20. As a result of the foregoing, Richardson 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: April 4, 2011


Kevin G. Kulling
Senior Regional Counsel
Mark A. Koerner
Associate Vice President and
Regional Chief Counsel
FINRA Department of Enforcement
55 W. Monroe St., Suite 2700
Chicago, IL 60603
Phone: (312) 899-4348
Fax: (312) 899-4600
e-mail Kevin.Kulling@FINRA.org