

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

Department of Enforcement,

Complainant,

v.

Milkie Ferguson Investments, Inc. (CRD No. 17606),
Edward Milkie (CRD No. 871257),
Manny Aizen (CRD No. 1676247),
Daniel Levin (CRD No. 707280),
and
Scott Schroeder (CRD No. 2277248),

Respondents.

Disciplinary Proceeding
No. 2009016271801

Hearing Officer – MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT AS TO
RESPONDENT LEVIN**

Date: June 7, 2013

INTRODUCTION

Disciplinary Proceeding No. 2009016271801 was filed on September 7, 2012, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Daniel Levin submitted an Offer of Settlement (Offer) to Complainant dated May 29, 2013. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement), and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Respondent Daniel Levin was a General Securities Representative at Milkie Ferguson. He entered the securities industry in 1980 as a General Securities Representative of another member of FINRA. He currently holds Series 7, 63, and 65 licenses. Levin became associated with Milkie Ferguson in 2004. On June 26, 2012, Milkie Ferguson filed a Form U5 for Levin, terminating his association with it as of the prior day. Subsequently, Levin associated with another FINRA member firm until September 20, 2012, when a Form U5 was filed on his behalf, terminating his association with it as of September 18, 2012. Levin is not currently associated with another FINRA member firm.

FINDINGS AND CONCLUSIONS

The findings herein are pursuant to Respondent Levin's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding. It has been determined that the Offer be accepted and that findings be made as follows:

FIRST CAUSE OF ACTION

Advertising Violations by Daniel Levin
(Violations of NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D),
and 2110, and FINRA Rule 2010)

1. On July 12, 2008, and July 26, 2008, Levin hosted his weekly radio show, "Investment Talk."

In these two shows, Levin made unwarranted and misleading statements and claims, exemplified by, but not limited to, the following:

- a. "Life settlement . . . best investments I've seen in 25 years bar none." (7/12/08 and 7/26/08)
- b. "Great upside potential on an average rate of 15 to 18% annualized rate on your money." (7/26/08)
- c. "You will be paid handsomely for it in the future." (7/26/08)
- d. "If you can double your money in the next 3, 5, 7, years you have done so much better than any other investment." (7/26/08)
- e. "I think the risk of your principal is virtually zero." (7/26/08)
- f. "How would you like to make money off the natural gas industry . . . I'm trying to get you 15% rate of return for two years and then you get your money back." (7/26/08)
- g. "These life settlements will be the best investment you ever see." (7/26/08)
- h. "I want you to make 15 to 18% on your money with little risk." (7/26/08)
- i. "I've talked to my friends . . . the oil and gas experts here and they say there are no risk." (7/26/08)
- j. "Would you like to make 15% annualized rate of return on your money?" (7/12/08)
- k. "How would you like to double your money anywhere from 3 to 5 years. . ." (7/12/08)
- l. "I have a two year investment that will pay you 15%." (7/12/08)
- m. "In my opinion we can't lose." (7/12/08)

n. "I would say that within a year or two most major brokerage firms will have them and they're going to give it to you at 8% return not 15 to 18%."
(7/12/08)

2. On the "Investment Talk" radio show that aired July 26, 2008, Levin also stated, "I bet you if you leave that money alone then you will do two and a half to three times the growth every ten years . . . maybe 35 is . . . maybe 100 in ten years and maybe 300 in . . . 20 years." This statement, along with certain of the others alleged in paragraph 12(a) through 12(n), violated NASD Rule 2210(d)(1)(D), which prohibits a member from making predictions or projections of a security's performance, or implications that gain or income realized in the past will be repeated in the future.
3. From July 26, 2007 to at least October 14, 2009, Levin also made unbalanced statements on their website (www.lifeselementsource.net) regarding life settlements. These statements failed to provide a sound basis for evaluating an investment in the contracts and products. The website should have disclosed that investors should consider costs, restrictions, and tax issues when considering selling or investing in a life settlement. In addition, the website should have provided a comprehensive discussion of the characteristics of the project. Finally, the website also contained statements and claims for which no reasonable basis was provided, exemplified by the following:
 - a. "Life settlement, the purchase of a life insurance policy by a third party from the policy owner for investment purposes, is one of the fastest growing trends in the financial markets today, historically providing a 15% to 16% annualized rate of return for the investor."

- b. "It's relatively low risk, potentially high yield return has offered many investors a great diversification tool and the opportunity to 'hedge' against the volatility of the stock market."

These statements violated NASD Rule 2210(d)(1)(A), which provides that "communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security, industry, or service."

- 4. In addition, from July 26, 2007 to at least October 14, 2009, Levin made unwarranted statements and claims on their website regarding life settlements.
 - a. "Unaffected by Market and Economic Conditions. - There's no need to worry about which way the wind is blowing. The returns on life settlements, unlike stocks, mutual funds and other investments, are unaffected by market fluctuations, business cycles, the economy or global unrest."
 - b. "Life settlements are similar to zero-coupon bonds. They are purchased at discounts to their face value which fall into general brackets according to the life expectancy of the owner or insured."
 - c. "Superior Yield Potential - In comparing the potential yields from life settlements as opposed to other forms of investment, it can quickly be seen that this immunity to economic and market conditions make life settlements an attractive choice. Not only are your investments safe from these market risks they have the opportunity to provide exceptional return on investments."

d. "It's relatively low risk, potentially high yield return has offered many investors a great diversification tool and the opportunity to "hedge" against the volatility of the stock market."

e. "With professional such as Life Partners, Inc., Dan Levin and Associates, IRA Plus South West, and Standford Group Company, we can insure not only the highest level of experience but the highest possible return on your Life Settlement Investments."

These statements violated NASD Rule 2210(d)(1)(B), which prohibits a member from making "any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public."

5. As a result of the foregoing, Respondent Daniel Levin violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D) and 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring after December 15, 2008).

SECOND CAUSE OF ACTION

General Solicitation by Respondent Daniel Levin (Violations of NASD Rule 2110 and FINRA Rule 2010)

6. Section 5 of the Securities Act of 1933 prohibits the sale of unregistered securities. Private placement securities offerings are typically exempt from registration under SEC Rule 506 of Regulation D; however, the exemptions to Regulation D are unavailable if the unregistered securities are offered for sale to the general public.
7. As alleged above, the Provident Shale Royalty offerings were unregistered securities offered pursuant to the exemptions offered by Rule 506 of Regulation D. These offerings could not be sold through general solicitations and still maintain their exempt status.

8. On the "Investment Talk" radio show, Levin discussed the Provident Shale Royalty offerings and promoted them as attractive alternative investments to his listeners.

Specifically, that individual made the following statements about the Provident Shale Royalty offerings during his radio show on July 12, 2008:

- a. "I have a two year investment for you that is paying 15%. And then we are going to sell our mineral rights. We are not drilling for oil. We are not taking any chance here. We are buying cash flow. We are buying existing, producing wells in the Fort Worth area, in the Ardmore, Oklahoma area. The company I'm dealing with is going to pay us 15% per year for the next two years and then sell the mineral rights off then give our money back. Here's the risk. The breakeven number is natural gas has to stay above \$5/M. Right now, it's at \$13. Demand would have to go down 75%. Demand ain't going anywhere for natural gas. We have to have it."
- b. "There's a two year investment. Now, I invested my money about eight months ago. It took this company about four months to raise \$30 million starting last November, December. Then it took -- they did it again. Then it took about 60 days to raise \$30 million. The last time they did it, it took 40 days. They're coming out this week with another offering. Probably take 20 days. Here's what they do. They take, let's say \$30 million bucks of your money. They go to the Barnett Shale out of Ft. Worth area and in what's called the Woodford Shale out of Ardmore, Southwest Oklahoma area. They buy up existing, producing mineral right acreage. There's a bunch of wells on their land. They're getting cash flow. That cash flow pays us 15% for the

next two years. They know people are going to come in and drill more on their land. There's no risk to us, to us when they drill, but if they hit, then we get a percentage of what they hit...This is a preferred stock in a partnership. That 15% income which comes monthly starting at about four months is taxed at the 15% bracket like a stock dividend."

- c. "It's for accredited investors, number one. \$50,000 for the life settlements, \$25,000 for the natural gas two year investment."

9. Additionally, Levin made the following statements about the Provident Shale Royalty offering during his Texas radio show on July 26, 2008:

- a. "There's a company in Dallas. They've been raising money for years. What they do, is they take your \$30 million. They go to the Barnett Shale, or they go up to the Woodford Shale near Ardmore and they buy up mineral rights."
- b. "They're going to pay you, starting in about four months, a monthly income for two years of 15% per year for two years, and then they're going to give you your money back."

10. The actions detailed above constitute general solicitations. These statements, and others made by Levin during his Texas show, were designed to procure orders for Provident Shale Royalty offerings. Although the statements did not name the investments specifically, they were part of an overall scheme designed to awaken an interest in the offerings and were the first step in a campaign to sell these securities. These statements were not made to customers with whom Milkie Ferguson (or the issuer) had a pre-existing and substantive relationship, but rather broadcast indiscriminately to the general public – essentially, anyone with access to a radio within range of the radio signal.

11. After making the statements on the radio show, Levin sold Provident Shale Royalty offerings to customers. Because the securities had lost their exemption from registration under Regulation D as a result of the general solicitation described above, those sales were impermissible sales of unregistered securities, in contravention of Section 5 of the Securities Act of 1933.
12. As a result of the foregoing, Respondent Daniel Levin violated NASD Rule 2110 (for conduct occurring before December 15, 2008) and FINRA Rule 2010 (for conduct occurring after December 15, 2008), by acting in contravention of Section 5 of the Securities Act of 1933.

Based on the foregoing, Respondent Daniel Levin violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D) and 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring after December 15, 2008), as alleged in the First Cause of Action, and NASD Rule 2110 (for conduct occurring before December 15, 2008) and FINRA Rule 2010 (for conduct occurring after December 15, 2008), by acting in contravention of Section 5 of the Securities Act of 1933, as alleged in the Second Cause of Action..

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent Levin be suspended for five months from association with any FINRA member in any capacity and fined \$30,000.

The fine shall be due and payable either immediately upon reassociation with a member firm following the five-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent Levin understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent Levin may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311.)

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



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