

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DARREN J. DIETRICH
(CRD No. 1814017)

Respondent.

Disciplinary Proceeding
No. 20090166607

Hearing Officer – LBB

DEFAULT DECISION

March 28, 2011

Respondent Darren J. Dietrich is barred from associating with a FINRA member firm in any capacity for failing to appear and testify at on-the-record interviews, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. In light of the bar, no additional sanction is imposed for executing unauthorized trades in a customer's account, in violation of NASD Conduct Rule 2110.

Appearances

Sean W. Firley, Senior Regional Counsel, Boca Raton, Florida, for the Department of Enforcement.

Darren J. Dietrich, *pro se*.

DECISION

The Department of Enforcement ("Enforcement") filed the two-cause Complaint in this disciplinary proceeding on August 30, 2010, charging Respondent Darren J. Dietrich ("Respondent") with: 1) executing unauthorized trades in a customer's account, in violation of

NASD Conduct Rule 2110;¹ and 2) failing to appear and testify at on-the-record interviews ("OTRs"), in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Respondent sent a response to the Complaint to Enforcement, which Enforcement forwarded to the Office of Hearing Officers on October 13, 2010, denying that the trades that were the subject of the Complaint were unauthorized, but not addressing the charge of failing to appear at OTRs. Respondent's response stated that he waived a hearing and wanted to be contacted only in writing. The Hearing Officer deemed Respondent's response to be an answer to the Complaint.

As discussed below, Respondent defaulted by failing to appear at the scheduled initial pre-hearing conference on December 15, 2010. On February 15, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9241(f) and 9269, the allegations in the Complaint are deemed admitted and Enforcement's motion is granted.²

I. Respondent's Default

By order of October 14, 2010, the Hearing Officer scheduled an initial pre-hearing conference for November 2, 2010. By Order of November 1, 2010, the initial pre-hearing conference was rescheduled for November 19, 2010, a date on which the parties agreed. On November 16, 2010, Respondent notified the Hearing Officer that he was unavailable on

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 Procedural and 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 Motion for Entry of Default Decision and Request for Sanctions, which included the Declaration Supporting Motion for Entry of Default Decision, signed by Sean Firley, Esq., counsel for the Department of Enforcement. Counsel's declaration is cited herein as "Decl. ¶ ____." References to the exhibits attached to Enforcement's motion are cited as "CX- ____."

November 19, that he was seeking counsel, and that he would submit dates on which he would be available in December. By Order of November 18, 2010, the Hearing Officer rescheduled the initial pre-hearing conference for December 15, 2010. When Respondent failed to appear at the initial pre-hearing conference, the Hearing Officer issued an Order for Respondent to Show Cause, directing Respondent to show cause why he should not be deemed in default for failing to appear at the initial pre-hearing conference on December 15, 2010. Respondent did not file a response to the Order.

Pursuant to FINRA Procedural Rule 9241(f), "The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has due notice." By failing to appear at the initial pre-hearing conference of which he had due notice, Respondent defaulted.

II. Jurisdiction

Respondent was first registered with FINRA in June 1988, and was subsequently associated with several FINRA member firms. He was registered with Brookstone Securities, Inc. ("Brookstone") from March 26, 2007, until January 16, 2009, when Brookstone filed a Form U5 notifying FINRA of the termination of Respondent's employment. Complaint ¶¶ 2-5; CX-1.

Although Respondent is not currently 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 unauthorized trades in the account of customer R.G. 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 2110.³

On November 21, 2008, Respondent purchased 800 shares of Direxionshares Small Cap Bull (“TNA”) without R.G.’s prior knowledge, authorization, or consent. On November 24, 2008, Respondent sold the 800 TNA shares, again without R.G.’s prior knowledge, authorization or consent. Complaint ¶¶ 8, 9; Decl. ¶ 12.

On December 5, 2008, Respondent purchased 2,000 shares of Terex Corp. (“TEX”) in R.G.’s account without R.G.’s prior knowledge, authorization, or consent. Respondent sold the 2,000 shares of TEX on December 8, 2008, without R.G.’s prior knowledge, authorization or consent. Complaint ¶¶ 11, 12; Decl. ¶ 12.⁴

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent executed unauthorized transactions in R.G.’s account, in violation of NASD Conduct Rule 2110.

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

The Second Cause of Action charges Respondent with failing to appear at on-the-record interviews, thereby violating FINRA Rules 8210 and 2010.

³ *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).

⁴ Although Respondent asserted in his brief Answer that the trades in R.G.’s account were authorized, Enforcement represents that R.G. represented in an interview that the trades were unauthorized, and Respondent admitted to Brookstone that the trades were unauthorized. Decl. ¶ 12.

FINRA staff sent a letter to Respondent requesting information about the alleged unauthorized trading. He responded on September 13, 2009, denying that he had placed any unauthorized trades in R.G.'s account. Complaint ¶ 16. On March 22, 2010, the staff sent a letter to Respondent, pursuant to Rule 8210, directing him to appear at an on-the-record interview on April 7, 2010, at FINRA's Florida District Office. The request was sent by first-class and certified mail to Respondent at the address that was listed for him in the Central Registration Depository ("CRD address"). When the staff telephoned Respondent on April 6, 2010, to confirm the April 7 OTR, Respondent told the staff that he could not attend the testimony until mid-June, and that he could not attend at the Florida District Office. Complaint ¶ 19. The staff agreed to a postponement, but told Respondent that the two-month delay was unacceptable. Respondent agreed to provide alternative dates for an April OTR. Respondent failed to provide alternative dates, and did not appear for the OTR on April 7, 2010. Complaint ¶¶ 17-20.⁵

On April 15, 2010, pursuant to FINRA Rule 8210, FINRA staff sent a letter to Respondent by first-class and certified mail at his CRD address, directing him to appear for an OTR on April 27, 2010. The staff left a voicemail message for Respondent on April 22, 2010, confirming the April 27 OTR. Respondent left a message for the staff on April 26, 2010, claiming that he could not attend an OTR for several weeks. The staff attempted to contact Respondent, and left a voicemail message stating that Respondent's failure to appear for the OTR would be considered a failure to appear pursuant to FINRA Rule 8210. Respondent did not appear for his OTR on April 27, 2010. Complaint ¶¶ 22-25.

⁵ The Complaint does not charge Respondent with failure to appear for the OTR on April 7, 2010.

FINRA staff sent a letter to Respondent at his CRD address on April 28, 2010, by first-class and certified mail, directing him to appear at an OTR on May 14, 2010. On May 10, 2010, the staff received an unsigned letter from Respondent stating that future communications from FINRA must be by mail only, and that he would not attend the OTR scheduled for May 14. Respondent failed to appear and testify at the OTR on May 14, 2010. Complaint ¶¶ 26-28.

On June 2, 2010, pursuant to FINRA Rule 8210, the staff sent a letter by certified and first-class mail, and FedEx, to Respondent at his CRD address, directing him to appear for an OTR on June 17, 2010. On June 16, 2010, the staff received an unsigned letter from Respondent stating that he was unavailable until after August 3. Respondent did not appear at the OTR on June 17, 2010. Complaint ¶¶ 29-31, 33; Decl. ¶ 12.

Pursuant to FINRA Rule 8210, Respondent was required to appear and testify at the OTRs of April 27, May 14, and June 17, 2010, 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 three on-the-record interviews, 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 or

⁶ *Dep't of Enforcement v. Hooper*, 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).

her authority or the terms of the customer's orders, and whether the unauthorized trading was egregious.⁷ Respondent's prior disciplinary history is an aggravating factor. On May 27, 1999, Respondent signed a Letter of Acceptance, Waiver and Consent, agreeing to a \$2,500 fine, censure, and a ten-day suspension for exercising discretion without written authority, in violation of NASD Conduct Rules 2510 and 2110. CX-1. There are no mitigating factors.

Enforcement recommends a 30-day suspension and a \$10,000 fine, which is reasonable under the facts and circumstances of this case. However, in light of the bar imposed for failing to appear at OTRs, discussed below, no sanction is imposed for unauthorized trading.

Enforcement does not seek restitution, and restitution is not appropriate in this case because customer R.G. profited from Respondent's unauthorized trades. Complaint ¶¶ 10, 13.

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. Respondent failed to appear for three scheduled OTRs. 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.

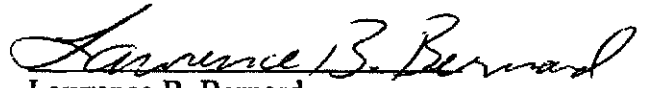
V. Conclusion

Respondent Darren J. Dietrich is barred for failure to appear and testify at three on-the-record interviews, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, no additional sanction is imposed for unauthorized trading, in violation of

⁷ *FINRA Sanction Guidelines* at 100 (2011).

⁸ *FINRA Sanction Guidelines* 33 (2011).

NASD Conduct Rule 2110. The bar will become effective immediately if this decision becomes
FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Darren J. Dietrich *(via overnight courier and first-class mail)*
 Sean W. Firley, Esq. *(via electronic and first-class mail)*
 Mark P. Dauer, Esq. *(via electronic mail)*
 David R. Sonnenberg, Esq. *(via electronic mail)*