

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH ORENDORFF
(CRD No. 4088280),

Respondent.

Disciplinary Proceeding
No. 2009016698303

Hearing Officer - MC

DEFAULT DECISION

March 29, 2011

For violating FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to appear for testimony pursuant to Rule 8210, Respondent is barred from associating with any FINRA member firm in any capacity. Because of the imposition of the bar, no separate sanction is imposed for Respondent's violations of NASD Conduct Rule 2110 for forgery and falsification of documents.

Appearances:

Kevin G. Kulling, Senior Regional Counsel, Chicago, Illinois, for the Department of Enforcement.

No appearance by or on behalf of Respondent Joseph Orendorff.

DECISION

I. Introduction

The Department of Enforcement filed the attached two-cause complaint on October 19, 2010. The First Cause of Action charges that Respondent Joseph Orendorff violated NASD

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Conduct Rule 2110¹ by creating falsified documents. It alleges that he obtained a customer's signature on a blank form and subsequently copied the signature onto at least three other forms, which he then submitted in connection with the customer's purchase of a fixed annuity. The Second Cause of Action alleges that Orendorff violated FINRA Conduct Rule 2010 and Procedural Rule 8210 when he failed to appear for on-the-record testimony as requested by FINRA staff in its investigation of the falsified documents.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Orendorff has not filed an Answer or otherwise responded to the Complaint. On January 25, 2011, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Kevin Kulling and seven exhibits.² Orendorff did not respond to the Default Motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, and for the reasons set forth below, the allegations in the Complaint will be deemed admitted and Enforcement's Default Motion will be granted.³

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Orendorff began his career in the securities industry in 1999. At the time of the conduct alleged in the Complaint, Orendorff was registered with FINRA as an Investment

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. See Regulatory Notice 08-57 (Oct. 2008). The First Cause of Action relates to conduct occurring prior to the adoption of the new rules, and the Second Cause of Action relates to conduct occurring after their adoption. Thus, the First Cause of Action alleges that Orendorff violated NASD Conduct Rule 2110, and the Second Cause of Action alleges that he violated FINRA Procedural Rule 8210 and Conduct Rule 2010, the latter of which is identical to former NASD Rule 2110. 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" with citation to specific paragraphs.

³ 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 and the exhibits filed by Enforcement.

Company/Variable Contracts Products Representative through his employer, member firm Thrivent Investment Management, Inc. ("Thrivent"). Thrivent terminated Orendorff's employment in November 2008.⁴

Because the conduct alleged in the Complaint occurred while Orendorff was registered with FINRA, and because the Complaint was filed within two years of the termination of his registration, FINRA retains jurisdiction over Orendorff for the purposes of this disciplinary proceeding.

B. Default

On October 19, 2010, Enforcement served the Complaint and Notice of Complaint on Orendorff at his CRD address and a second residential address by certified mail and first-class mail. The first-class mailings were not returned. Both certified mailings were returned marked "unclaimed."⁵ When Orendorff did not file an Answer, Enforcement served the Complaint and Second Notice of Complaint on him at both addresses on December 3, 2010, again by certified mail and first-class mail. Once more, the first-class mailings were not returned. The receipt for the certified mailing to the second address was returned, however, bearing the signature "J. Orendorff" and indicating that he received it on December 20, 2010.⁶ Nonetheless, Orendorff has not filed an Answer or responded otherwise to the Complaint.

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Orendorff by certified mail at his CRD address, Enforcement provided him with constructive

⁴ Decl. ¶ 5; CX-1, p. 2.

⁵ Decl. ¶ 6; CX-3.

⁶ Decl. ¶ 7; CX-5.

notice of the Complaint⁷ and thus complied with the requirements of Rule 9134.⁸ By failing to file an Answer, Orendorff has defaulted.

C. Violations

1. Orendorff Falsified Documents by Affixing a Customer Signature to Blank Documents and Filing Them as Originals

In June 2008, Orendorff met with a customer interested in purchasing a fixed annuity through Thrivent. To provide funding for the purchase, Orendorff closed out an IRA the customer held at another firm. In order for her to purchase the annuity, Thrivent required the customer to fill out and sign an Asset Transfer Disclosure form ("ATD"), but Orendorff failed to include the ATD when he submitted the paperwork for the purchase. When Thrivent informed him the ATD was missing, Orendorff completed the form, had the customer sign it, and submitted it to Thrivent. Because Orendorff made mistakes on the form, Thrivent returned it to him for correction and resubmission. Instead of having the customer sign a corrected form, however, Orendorff had her sign a blank form. He then copied that signature onto a revised ATD and submitted the document to the firm. Because Orendorff made more mistakes on the form, Thrivent returned it to him again. He resubmitted revisions of the ATD on three occasions in July 2008, each time copying the signature from the signed blank form, instead of having the customer sign each newly revised form.⁹

On October 10, 2008, Thrivent realized the revised forms had not been properly signed by the customer. When the firm questioned him about the documents, Orendorff admitted altering and submitting them. Thrivent terminated Orendorff's employment for violating firm

⁷ The signed receipt for the certified mailing to the second address suggests that Orendorff had actual notice of the Complaint.

⁸ 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)).

⁹ Decl. ¶ 10.

policies requiring original customer signatures on forms submitted by representatives and prohibiting its representatives from affixing signatures to documents.¹⁰

These facts, as alleged in the Complaint and supported by the Kulling Declaration and Enforcement's exhibits, are sufficient to establish, for the purposes of this Default Decision, that Orendorff violated NASD Rule 2110 by creating and submitting falsified documents to Thrivent.

2. Orendorff Failed to Appear and Testify

Upon reviewing the Form U5 filed by Thrivent describing the circumstances of the firm's termination of Orendorff's employment, FINRA staff initiated an investigation.¹¹ Consequently, on September 8, 2010, the staff sent a letter requesting that Orendorff appear for an on-the-record interview on September 23, 2010. Citing FINRA Rule 8210, the letter instructed Orendorff that he was required to appear to answer questions and that failure to do so could expose him to disciplinary sanctions. The staff sent the letter by first-class and certified mail to both Orendorff's CRD address and the second residential address. The first-class mailings were not returned, but the staff received the receipts for both of the certified mailings. Both appear to have been signed by Joseph Orendorff, evidencing that they were delivered to him on September 11, 2010. Nonetheless, Orendorff did not appear for his scheduled testimony on September 23, 2010.¹²

These facts, as alleged in the Complaint and supported by the Kulling Declaration and Enforcement's exhibits, are sufficient to establish, for the purposes of this Default Decision, that Orendorff violated FINRA Rules 2010 and 8210 by failing to appear to testify as requested pursuant to Rule 8210.

¹⁰ Decl. ¶¶ 10, 11; CX-1, p. 2.

¹¹ Decl. ¶ 5.

¹² Decl. ¶ 12.

III. Sanctions

A. Failure to Appear for Testimony

FINRA's Sanction Guidelines recommend a bar when a respondent fails to respond to a request for information issued pursuant to Procedural Rule 8210.¹³ If mitigating factors are present, the Sanction Guidelines recommend consideration of a suspension in any or all capacities for up to two years, and a fine of \$25,000 to \$50,000.

As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations. ... Procedural 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 provide such information."¹⁴ Concerning sanctions for violating Rule 8210, "[t]he Guidelines treat a failure to respond ... as egregious."¹⁵

In this instance, Orendorff did not respond to a request pursuant to Rule 8210 to appear and provide testimony at an on-the-record interview FINRA staff scheduled to investigate the circumstances of the termination of his employment by Thrivent. The record is devoid of mitigation. Accordingly, the appropriate sanction is a bar.

B. Falsification of Documents

Conduct Rule 2110 requires a registered person, "in the conduct of his business," to "observe high standards of commercial honor and just and equitable principles of trade." It is

¹³ *FINRA Sanction Guidelines*, p. 33 (2011).

¹⁴ *Dep't of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-*36 (N.A.C. Dec. 18, 2006).

¹⁵ *Id.* at *41.

well established that falsification of documents is “inconsistent with the high ethical requirements of Conduct Rule 2110.”¹⁶

For an individual who engages in forgery or falsification of records, the FINRA Sanction Guidelines direct adjudicators to consider the nature of the documents and whether or not the respondent had a good-faith, but mistaken, belief he had authority to create the document. The Guidelines recommend a fine of \$5,000 to \$100,000, and, in cases in which mitigating factors are present, suspension of up to two years. In egregious cases, the Guidelines recommend a bar.¹⁷

Although Orendorff repeatedly submitted forms that were not properly signed by his customer, there is no evidence he did so for personal gain or for any reason other than to accomplish his customer’s objective. Furthermore, while the record shows that Orendorff violated Thrivent’s policies, the customer initially signed a blank document at Orendorff’s request to allow him to submit the form on her behalf. Because of this, Orendorff could have inferred that the customer consented to his making necessary corrections to the form and then resubmitting it with the customer’s copied signature.

For these reasons, a suspension of a month and a fine of \$5,000 would be reasonable sanctions for Orendorff’s falsification of records. Because of the bar imposed for Orendorff’s violations of FINRA Rules 2010 and 8210, however, there is no need to impose a separate sanction for his violations of NASD Rule 2110 in this case.

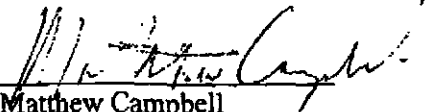
¹⁶ *Dep’t of Enforcement v. Cuozzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *22-*23 (N.A.C. Feb. 27, 2007); see also *Dep’t of Enforcement v. Kapara*, No. C10030110, 2005 NASD Discip. LEXIS 41, at *21 (N.A.C. May 25, 2005).

¹⁷ *FINRA Sanction Guidelines*, p. 37 (2011).

IV. Order

Respondent Joseph Orendorff is barred from associating with any FINRA member firm in any capacity for violating FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to appear and testify as requested by FINRA staff pursuant to Rule 8210. Because of the bar, no additional sanction needs to be imposed for Orendorff's violations of NASD Conduct Rule 2110 for forgery and falsification of documents.

The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

Copies to:

Joseph Orendorff (*via overnight courier and first-class mail*)
Kevin G. Kulling, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Joseph Orendorff
(CRD No. 4088280),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090166983

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between approximately July 2, 2008 and July 18, 2008, Joseph Orendorff affixed a customer's signature to at least three documents. Also, Orendorff failed to appear for testimony that was requested pursuant to Rule 8210.

RESPONDENT AND JURISDICTION

2. Joseph Orendorff entered the securities industry in 1999 as an Investment Company/Variable Contracts Representative of Lutheran Brotherhood Securities Corp., the predecessor to Thrivent Investment Management Inc. (Thrivent) Orendorff remained registered with Thrivent until November 25, 2008. FINRA retains jurisdiction over Orendorff until November 25, 2010.

3. Although Respondent has not been associated with a FINRA member firm since November 25, 2008, 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/she ceased to be associated with a FINRA member and (2) the Complaint charges him/her with misconduct committed while he was associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION

(Affixing Customer Signature to Documents)

NASD Conduct Rule 2110

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. In June 2008, Orendorff met with a customer who wished to invest in a fixed annuity at Thrivent.
6. To fund the investment, the customer had closed out her IRA at another firm.
7. As part of the fixed annuity purchase, the Thrivent required that the customer complete and sign an Asset Transfer Disclosure (ATD) form.
8. Orendorff submitted paperwork for the annuity purchase, but failed to complete the ATD form.
9. After Thrivent informed Orendorff about the missing form, Orendorff completed the form, the customer signed the form, and it was submitted. However, Orendorff made errors on the form and was required to resubmit the form.

10. Instead of having the customer sign a newly completed form, Orendorff obtained the customer's signature on a blank form.
11. Orendorff affixed the signature from the blank form to the revised form and resubmitted the form.
12. Because of additional errors, Orendorff was required to resubmit the form again. Orendorff submitted revised forms on July 2, 2008, July 9, 2008 and July 18, 2008, all which included the affixed signature of the customer taken from the blank form that the customer had signed.
13. Thrivent prohibited its representatives from affixing signatures to documents and required original signatures on each form.
14. As a result of the foregoing, Orendorff violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Failure to Appear and Testify)
FINRA Rules 8210 and 2010

15. The Department realleges and incorporates by reference paragraphs 1 through 14 above.
16. On or about September 8, 2010, pursuant to FINRA Rule 8210, FINRA staff sent a letter to Orendorff requesting that he appear for an on-the-record interview on September 23, 2010. The letter informed Orendorff that he was obligated to appear as requested and answer all questions. The letter also informed Orendorff that the failure to appear for the on-the-record interview could expose him to disciplinary sanctions, including a permanent bar from the industry. The letter was sent by first

class mail and certified mail, return receipt requested, to Orendorff's last known address as reflected in the Central Registration Depository (CRD): [REDACTED]

[REDACTED]. The first class mailing of the letter was not returned to FINRA. The certified mail receipt was returned to FINRA signed by Joseph Orendorff and dated September 11, 2010.

17. In addition, FINRA staff sent the same request for testimony described above in paragraph 16 pursuant to Rule 8210 to a second address that staff had obtained: [REDACTED]. That request also was sent by first class mail and certified mail, return receipt requested. The first class mailing was not returned. The certified mail receipt was returned signed by Joseph Orendorff, dated September 11, 2010.

18. On September 23, 2010, Orendorff did not appear for testimony.

19. The above constitutes separate and distinct violations of 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: October 19, 2010

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