

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRUCE LIBMAN
(CRD No. 1859821),

Respondent.

Disciplinary Proceeding
No. 2009016911206

Hearing Officer - MC

ORDER ACCEPTING OFFER OF
SETTLEMENT

Date: 1/27/12

INTRODUCTION

Disciplinary Proceeding No. 2009016911206 was filed on November 17, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent Bruce Libman submitted an Offer of Settlement ("Offer") to Complainant dated January 17, 2012. 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, 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 certain of the allegations of the Complaint as set forth

below, and to the imposition of the sanction 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

1. Libman entered the securities industry in October 1987 and has since been registered with various FINRA member firms. Most recently, he was registered as an Investment Company Products/Variable Contracts Limited Representative with Park Avenue Securities, LLC ("Park Avenue" or "the firm") until he was discharged on December 14, 2009 with regulatory action pending for "Failure to Cooperate with a FINRA Investigation."

2. Although Libman is no longer registered or associated 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 effective date of termination of Respondent's registration with Park Avenue, namely, December 14, 2009; and the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

3. In September 2008 Libman, a registered representative with FINRA member firm Park Avenue, invested in Agape Merchant Advance, LLC ("Agape") using funds provided by his friend, SW.

4. Libman invested pursuant to a "Participation Agreement" ("Agreement") offered by Agape to Libman and others. The Agreement constitutes an "investment contract" and thus a security under § 3(a)(10) of the Securities Exchange Act. 15 U.S.C. § 78c(a)(10).

5. The Agreement provided that participants, in return for their investments, would receive a "potential" return of "up to" 4% of their investment each month and that the principal would be returned upon written request.
6. The Agreement provided that Agape would use the funds to enter into financial transactions in which Agape "advances" funds to certain merchants that had been "operational for one year or more" and had a monthly "Visa/MC sales history of greater than ten thousand dollars."
7. Advances to merchants were to be no larger than \$50,000.00 at a time. Merchants were to repay the advances with interest, *i.e.*, \$1.38 for every dollar advanced, within six months, amounting to a 76% annual interest rate.
8. Under the Agreement, Agape had the responsibility to find suitable merchants using certain models, guidelines, and industry averages; to manage, perform, terminate, and enforce the contracts; and to limit the risk on all advances to 1% per annum.
9. The Agreement provided that advances to merchants were not guaranteed; repayment of advances was not guaranteed; and rates on advances to merchants would vary as determined by Agape.
10. Persons referring participants to Agape were to receive commissions of either 1% or 2% per month.
11. On August 26, 2008, Libman obtained a check in the amount of \$202,673.58 from SW. SW made the check out to herself and endorsed it to Libman.
12. On or about September 2, 2008, Libman deposited SW's check into his personal checking account.
13. On September 30, 2008, Libman withdrew \$200,000 of the funds SW gave him by

causing his bank to issue a cashier's check payable to Agape Merchant Services. He gave the check to a representative of Agape, pursuant to the Agreement.

14. In return, Libman received from Agape four monthly payments from October 2008 through January 2009, each in an amount equal to 4% of principal, as well as commission payments of 2% for the months of October and November. He received no further payments, since Agape collapsed in January 2009.

15. Each payment was deposited into Libman's account.

16. Libman did not provide written notice to, or receive prior approval from, Park Avenue regarding the Agape investment.

17. Libman refused to provide the staff, in response to a FINRA Rule 8210 request, with certain bank records and with information relating to the source of funds he used to invest in Agape.

**Violation of NASD Rules 3040 and 2110:
Failing to Provide Prior Written Notice of a Private Securities Transaction**

18. The Agreement with Agape constitutes an "investment contract" and thus a "security" under § 3(a)(10) of the Securities Exchange Act. 15 U.S.C. § 78c(a)(10).

19. Libman invested funds with Agape pursuant to the Agreement in a private securities transaction.

20. Libman failed to notify Park Avenue in writing and obtain its approval prior to making the investment.

21. Libman received compensation from Agape as a result of the private securities transaction.

22. In so doing, Libman violated NASD Rules 3040 and 2110.

**Violation of FINRA Rules 8210 and 2010:
Failure to Provide Information to FINRA**

23. On October 29, 2010, FINRA staff requested, pursuant to FINRA Rule 8210, that Libman provide, among other things, all records for all bank accounts and financial accounts in which he had an interest, to include (i) monthly statements; (ii) copies of all checks (front and back) deposited into the accounts; and (iii) copies of all checks drawn from the accounts for the time period January 1, 2007 through October 29, 2009.

24. In response, Libman produced certain monthly statements and copies of certain checks drawn from his accounts, but failed to provide any copies of checks deposited into the accounts.

25. On April 9, 2010, through his counsel, Libman refused to provide copies of all checks deposited into his accounts.

26. By letter dated April 12, 2010, FINRA staff made a second request pursuant to FINRA Rule 8210 that Libman provide copies of all checks deposited into his accounts. The letter was sent by first-class mail and electronic mail to Libman's counsel.

27. In the April 12 letter, FINRA staff also requested additional information pertaining to Libman's deposits and specifically pertaining to the deposit of \$202,673.58, to include the identity of the person or the entity providing the funds and the purpose for which the funds were provided to Libman. The staff also requested that Libman identify each deposit that included funds obtained directly or indirectly from SW.

28. On April 15, 2010, through his counsel, Libman refused to provide the requested bank documents and information relating to the bank deposits. Libman's counsel also informed the staff that Libman would no longer cooperate with the staff's investigation.

29. In so doing, Libman violated FINRA Rules 8210 and 2010.

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 be:

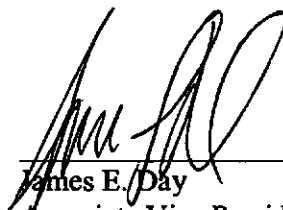
- Barred from association with any member firm in any and all capacities.

Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "James E. Day", is written over a horizontal line.

James E. Day
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