

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEREMY B. SHANKSTER
(CRD No. 2887067),

Respondent.

Disciplinary Proceeding
No. 2009016927501

Hearing Officer – LBB

DEFAULT DECISION

March 11, 2011

Respondent Jeremy B. Shankster is barred from associating with any FINRA member in any capacity for failing to provide documents and information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, no additional sanction is imposed for participating in private securities transactions without providing prior written notice to his firm, in violation of NASD Conduct Rules 3040 and 2110.

Appearances

Helen G. Barnhill, Esq., for the Department of Enforcement, Denver, Colorado.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the two-cause Complaint in this disciplinary proceeding on October 12, 2010. The Complaint charges Respondent Jeremy B. Shankster ("Respondent") with: (1) participating in private securities transactions ("selling away"), in violation of NASD Conduct Rules 3040 and 2110; and (2) failing to provide documents and information requested by FINRA staff, in violation of FINRA Procedural Rule

8210 and Conduct Rule 2010.¹ Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.²

On February 11, 2011, Enforcement filed a Motion for Entry of Default Decision. Respondent did not respond to Enforcement's motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, Enforcement's motion is granted, and the allegations of the Complaint are deemed admitted.³

I. Respondent's Default

On October 6, 2010, Enforcement served the Notice of Complaint and Complaint by first-class and certified mail on Respondent at his residential address, as listed in the Central Registration Depository ("CRD address"). Neither mailing was returned by the Postal Service. Enforcement did not receive a return receipt for the certified mailing. Decl. ¶ 12; CX-3. Respondent did not answer or otherwise respond to the Complaint.

On November 4, 2010, Enforcement served Respondent with a Second Notice of Complaint and a copy of the Complaint by first-class and certified mail at his CRD address. The certified mailing was returned to Enforcement marked "unclaimed." The first-class mailing was not returned. Decl. ¶ 13; CX-4. Respondent did not answer or otherwise respond to the Complaint.

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. For the Second Cause of Action, this decision refers to and relies on the FINRA Procedural and Conduct Rules.

² Enforcement served a Third Notice of Complaint because the Postal Service had no record of the first certified mailing. See Motion for Entry of Default Decision 2, n. 1.

³ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration of Helen G. Barnhill in Support of Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ___." The supporting documentation is cited as "CX-___."

On January 18, 2011, Enforcement served a Third Notice of Complaint and a copy of the Complaint on Respondent at his CRD address, by first-class and certified mail. On January 24, 2011, FINRA received the return receipt signed by Respondent, dated January 21, 2011. Decl. ¶ 14; CX-5. Respondent has not answered or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent first became registered as a general securities representative with Charles Schwab & Co., Inc. ("Schwab") in October 1998. Schwab terminated Respondent's employment on January 27, 2009.⁴ Respondent has not been registered with a FINRA member firm since that time. Complaint ¶ 2; Decl. ¶ 5; CX-1.

Although Respondent has not been registered with a FINRA member firm since January 27, 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 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. Private Securities Transactions, in Violation of NASD Conduct Rules 3040 and 2110

The First Cause of Action charges Respondent with participating in private securities transactions without providing written notice to his firm, in violation of NASD Conduct Rules 3040 and 2110. NASD Conduct Rule 3040 defines a "private securities transaction" as "any

⁴ FINRA began its investigation after receiving a Form U5 that Schwab filed on January 27, 2009, reporting the termination of Respondent's employment. Complaint ¶¶ 5-6.

securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities [that] are not registered with the Commission." The Rule provides that no associated person "shall participate in any manner in a private securities transaction" except in accordance with the requirements of the Rule. The Rule requires an associated person to provide his employer with written notice of private securities transactions before the transactions take place.⁵ A violation of NASD Conduct Rule 3040 is a violation of NASD Conduct Rule 2110.⁶

Respondent asked customer WB, a venture capitalist, to provide him with information about companies with growth potential so Respondent might inform other customers of such opportunities. WB informed Respondent about two companies, DFSH and WSGF, in 2007 and 2008. Complaint ¶¶ 4. Between May 2008 and November 2008, twelve of Respondent's customers invested a total of approximately \$1,727,000 in the common stock of DFSH. Three other customers invested a total of approximately \$750,000 in WSGF. Respondent either recommended or discussed DFSH or WSGF with the customers before their purchases. Further, he facilitated the purchases of DFSH by instructing customers to wire their funds to escrow accounts for DFSH, and facilitated the purchases of WSGF by instructing the customers with respect to payment for their shares. Respondent participated in these DFSH and WSGF securities transactions without providing prior written, or oral, notice to Schwab. Complaint ¶¶ 5-8; Decl. ¶¶ 17-18.⁷

The allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent participated in private securities transactions without providing written notice to his firm, thereby violating NASD Conduct Rules 3040 and 2110.

⁵ See NASD Conduct Rule 3040(b).

⁶ *Department of Enforcement v. Frankfort*, No. C02040032, 2007 NASD Discip. LEXIS 16, at *39 n.25 (N.A.C. May 24, 2007) (citation omitted).

⁷ Schwab later refunded the amounts invested by the customers. Complaint ¶¶ 6, 8.

B. Failure to Provide Documents and Information, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010

The Second Cause of Action charges Respondent with failing to provide documents and information in response to FINRA's requests for information, pursuant to FINRA Procedural Rule 8210. On March 11, 2009, pursuant to Rule 8210, FINRA staff mailed a request to Respondent by certified and regular mail at his CRD address. Although the name of Respondent's street was misspelled on the letter, Respondent received the request, and signed and returned the return receipt. Complaint ¶ 11. Respondent provided a significant portion of the information requested, but his response was incomplete because he failed to provide bank records for January 2008 through February 2009, and a 2008 tax return, as required by the letter. Complaint ¶ 11.

On May 21, 2009, pursuant to Rule 8210, FINRA staff sent a second request for documents and information to Respondent at his CRD address by first-class and certified mail, but again misspelled the street name. The staff sent the letter to the correct CRD address on June 12, 2009. The second request required Respondent to provide information concerning two other private placements, SUD and EC, and again required the submission of bank statements and the 2008 tax return. Both certified mailings were returned by the Postal Service; neither first-class mailing was returned. FINRA staff sent the second request for documents and information to Respondent at his correct CRD address again on July 16, 2010, by first-class and certified mail. Respondent did not respond to the second request for information. Complaint ¶¶ 12-14.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide documents and information that was

required by requests issued pursuant to Procedural Rule 8210, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.⁸

IV. Sanctions

For the reasons discussed below, the Hearing Officer imposes a bar for failing to provide documents and information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, no additional sanctions are imposed for selling away, in violation of NASD Conduct Rules 3040 and 2110.

A. Sanctions for Violation of Conduct Rules 3040 and 2110

The FINRA Sanction Guidelines ("Sanction Guidelines") for selling away provide that the first step in determining sanctions is to assess the quantitative extent of the activity.⁹ The Sanction Guidelines recommend a suspension of one year to a bar, and a fine of between \$5,000 and \$50,000, where the dollar amount of the transactions exceeds \$1 million. Enforcement recommends a two-year suspension, noting a number of mitigating and aggravating factors.

Having considered all of the factors noted by Enforcement, the Hearing Officer finds that a two-year suspension in all capacities is an appropriate sanction. In light of the bar imposed for the failure to provide information, however, no sanction is imposed for the violation of NASD Conduct Rules 3040 and 2110.

B. Sanctions for Violations of Procedural Rule 8210 and Conduct Rule 2010

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. A bar is also standard for a partial response, unless the person can demonstrate that the information provided

⁸ A violation FINRA Rule 8210 is also a violation of FINRA Conduct Rule 2010. *Dep't of Enforcement v. Hoeper*, 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).

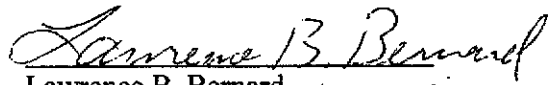
⁹ *FINRA Sanction Guidelines* 14 (2010).

substantially complied with all aspects of the request.¹⁰ Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years. There are no mitigating factors. Under the recently revised Sanction Guidelines, a bar is the appropriate sanction.

V. Conclusion

Respondent Jeremy B. Shankster is barred from associating with any FINRA member firm in any capacity for failing to provide documents and information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, no additional sanction is imposed for participating in private securities transactions without providing prior written notice to his firm, in violation of NASD Conduct Rules 3040 and 2110.

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


Lawrence B. Bernard
Hearing Officer

Copies to: Jeremy B. Shankster (*via overnight courier and first-class mail*)
 Helen G. Barnhill, Esq. (*via e-mail and first-class mail*)
 Mark P. Dauer, Esq. (*via e-mail*)
 David R. Sonnenberg, Esq. (*via e-mail*)

¹⁰ FINRA Sanction Guidelines 33 (2010); See Reg. Notice 11-07.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeremy B. Shankster (CRD No. 2887067),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009016927501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Jeremy Shankster failed to notify his employing broker-dealer of his intention to participate in private securities transactions in which he raised over \$2.4 million from fifteen investors, who invested in two securities over the course of six months. This conduct violated NASD Conduct Rules 3040 and 2110. In addition, respondent Shankster provided some, but not all, of the information requested by FINRA staff in 8210 requests for information and documents. His failure to provide that information impeded FINRA's ability to investigate all of the potential violations suggested by the facts known to FINRA and violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Jeremy Shankster first became registered as a general securities representative with Charles Schwab & Co., Inc. ("Schwab" or "the Firm") in the Firm's Las Vegas branch office in October 1998. Prior to that time, and starting in March 1997, he worked in the Firm's Operations Department. Schwab discharged Shankster and terminated his registration on January 27, 2009. Shankster has not been associated or registered with another FINRA member since that time. Although Respondent has not been associated with a FINRA member firm since January 27, 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) he failed 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 member.

FIRST CAUSE OF ACTION

(Selling Away – NASD Conduct Rules 3040 and 2110)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. Shankster learned about two companies, WSGF and DFSH through WB, a venture capitalist and customer, who opened an account with Shankster at Schwab. Shankster asked WB to provide him with information about companies with growth potential that WB encountered in his business, so that Shankster might inform his customers of such opportunities. WB informed Shankster of investment opportunities in WSGF in the fall of 2007 and in DFSH in June, 2008.

5. Between approximately May 2008 and November 2008, twelve of Shankster's customers invested a total of approximately \$1,727,000.00 in the common stock of DFSH. Shankster either recommended or discussed DFSH with the customers prior to their purchases. Further, he facilitated the purchases by instructing customers to wire their funds to escrow accounts for DFHS. The customers are HP, LJ, JHT, BJ, HB, OVE and MCE, the Ps, GLKT, JA, FCDT and JK.
6. Shankster participated in these DFSH securities transactions without providing prior written notice containing the information required by Rule 3040 to the Firm. The Firm later refunded the amounts invested in DFSH to the customers.
7. Between approximately May 2008 and October 2008, three of Shankster's customers, AC, TD and WFT, invested a total of approximately \$750,000.00 in the common stock of WSGF. Shankster recommended WSGF as an investment to these three customers and facilitated the purchases by instructing the customers with respect to payment for their shares.
8. Shankster participated in these securities transactions without providing prior written notice to the Firm containing the information required by Rule 3040. Schwab later refunded the amounts invested in WSGF to the three customers.
9. Participating in the above-described private securities transactions without providing prior written notice to Schwab as required by the Rule constituted violations of NASD Conduct Rules 3040 and 2110 by Shankster.

SECOND CAUSE OF ACTION

(Failure to Provide Documents and Information -- FINRA Rules 8210 and 2010)

10. The Department realleges and incorporates by reference paragraphs 1, 2 and 4 through 10 above.
11. On March 11, 2009, FINRA staff sent Shankster an 8210 request letter via certified and regular mail. Shankster's residential CRD address is [REDACTED] [REDACTED] ("residential CRD address"). The letter was inadvertently mailed to an incorrect CRD address - [REDACTED]. Notwithstanding this error, Shankster received the request. He signed the Domestic Return Receipt for the letter and also responded to the letter, which was received by FINRA staff on March 30, 2009. While Shankster did provide a significant portion of the information requested by FINRA staff, his response was incomplete. Shankster did not provide requested bank records for January 2008 through February 2009 and tax returns for 2008.
12. On May 21, 2009, the staff sent Shankster another request letter via certified and regular mail. Again, the letter was inadvertently mailed to an incorrect CRD address -- [REDACTED] [REDACTED]. This second request letter, which cited Rule 8210, requested certain information that was previously requested in the letter dated March 11, 2009, but that had not been provided. This included bank statements for an account which Shankster advised he maintained with Schwab and his 2008 tax return. It also requested additional new information concerning two other possible private placements in which the FINRA staff believed that Shankster was involved -- SUD and EC. FINRA staff formed this belief based upon information that Shankster provided in his response received on March 30, 2009. Specifically, Shankster stated that he had introduced clients to WB

concerning investment opportunities in SUD and EC. On July 6, the Postal Service returned the certified letter to FINRA, marked as "unclaimed." The first class letter was not returned. Shankster did not respond to the letter dated May 21, 2009.

13. On June 12, 2009, FINRA resent the second request letter via certified and regular mail to Shankster's correct residential CRD address. FINRA requested a response by June 25, 2009. On August 12, 2009, FINRA received back the certified letter dated June 12, 2009, which the Postal Service marked "unclaimed". The first class letter was not returned. Shankster did not respond to this letter.
14. In order to ensure that the request was served twice at the correct address, FINRA staff resent the second request letter again, on July 16, 2010, to Shankster's CRD address via first class and certified mail. FINRA staff requested the information on or before July 30, 2010. Shankster did not respond to this request letter. As of the date hereof, neither the certified or the first class mailings have been returned to FINRA staff, nor has FINRA staff received a signed Domestic Return Receipt.
15. FINRA's ability to fully investigate its case was hampered by Shankster's failure to respond. Without the provision of his bank records and tax returns, FINRA staff could not take further steps to verify Shankster's assertion that he received no compensation from the DFSH or WSGF investments. Moreover, staff was not able to complete its investigation into his potential involvement in SUD and EC sales to Firm customers.
16. The failure to provide information and documents to FINRA as requested in its letters dated March 11, 2009, June 12, 2009 and July 16, 2010, constituted separate and distinct violations of FINRA Rules 8210 and 2010 by Shankster.

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 6, 2010


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