

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

**BRIAN R. MITCHELL
Limited Registered Representative
(CRD No. 5205677)**

Respondent

**Disciplinary Proceeding
No. 2009017279501**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about August 2006 until at least March 2009, Brian R. Mitchell (Mitchell) engaged in outside business activities, in that he was an independent sales associate with Pre-Paid Legal Services, Inc. (Pre-Paid Legal), while failing to provide prompt written notice to his employing FINRA registered firm of this activity. These acts violated NASD Rule 3030, and prior to December 15, 2008, NASD Rule 2110, and after December 15, 2008, FINRA Rule 2010.

2. On or about December 2, 2008, Mitchell caused \$36.95 to be withdrawn from CN's checking account for a payment to Pre-Paid Legal, without CN's knowledge or consent, in violation of NASD Rule 2110.

3. On or about February 2, and February 26, 2010, FINRA Staff (Staff) sent letters to Mitchell requesting that he respond to questions about allegations that he engaged in outside

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business activities and misused CN's funds, but Mitchell failed to respond to the Staff's requests, in violation of FINRA Rules 2010 and 8210.

RESPONDENT AND JURISDICTION

4. From on or about August 28, 2006 to on or about March 6, 2009, Mitchell was registered as an Investment Company and Variable Contracts Products Representative with State Farm VP Management Corp. (State Farm Management), a FINRA registered firm. During this time period, Mitchell was also employed by State Farm Insurance Company (State Farm Insurance), an affiliated company of State Farm Management. Mitchell is not currently associated with any FINRA registered firm. Since this Complaint is filed within two years of the termination of Mitchell's registration with a FINRA registered firm, Mitchell is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of the FINRA's By-Laws.

**FIRST CAUSE OF ACTION
NASD Rule 3030, NASD Rule 2110 and FINRA Rule 2010 –
Outside Business Activity by Mitchell.**

5. The Department realleges and incorporates by reference paragraphs number 1 through 4 above.

6. From in or about at least August 2006 to in or about March 2009, Mitchell was an Independent Sales Associate with Pre-Paid Legal, and he sold legal and identity theft services, which were rendered by the company. During this time he also received compensation for marketing the services to other individuals, as a network marketing representative.

7. In his position with Pre-Paid Legal, Mitchell was employed by and accepted compensation from Pre-Paid Legal for the sale of legal and identity theft services, while failing to provide prompt written notice that he was engaged in such activities to State Farm Management.

8. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Rule 3030, and prior to December 15, 2008, NASD Rule 2110, and after December 15, 2008, FINRA Rule 2010, by Mitchell.

**SECOND CAUSE OF ACTION
NASD Rule 2110 – Misuse of Funds by Mitchell.**

9. The Department realleges and incorporates by reference paragraphs number 1 through 8 above.

10. During all relevant times, SN and CN were members of the public, who were husband and wife. SN and CN were also customers of State Farm Insurance, and their insurance accounts were serviced by Mitchell.

11. SN was offered a position to assist Mitchell regarding his work with State Farm Management and State Farm Insurance. As part of that employment, Mitchell offered legal services through Pre-Paid Legal to SN at no cost to her.

12. On or about December 2, 2008, Mitchell caused \$36.95 to be withdrawn from CN's checking account to pay for the Pre-Paid Legal service, without the knowledge and consent of CN or SN.

13. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Rule 2110 by Mitchell.

**THIRD CAUSE OF ACTION
FINRA Rules 2010 and 8210 - Failure to Respond to the Staff's
Requests for Information by Mitchell.**

14. The Department realleges and incorporates by reference paragraph numbers 1 through 13 above.

15. On or about February 2, 2010, Staff sent Mitchell a request that he provide a written response and documentation regarding questions about his employment with Pre-Paid Legal and the funds that were withdrawn from CN's checking account, as described above in paragraphs 5 through 13, pursuant to and in accordance with the provisions of FINRA Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Mitchell's address of record as contained in the records of the Central Registration Depository, in Streetsboro, Ohio (CRD Address). Neither the first class mailing nor the certified mailing was returned to the Staff. The certified return receipt was also not returned to the Staff. The Track and Confirm website from the United States Postal Service showed that the certified letter was delivered on February 17, 2010 in Streetsboro, Ohio.

16. Having not received a response to the request for information and documentation sent on February 2, 2010, on or about February 26, 2010, the Staff sent Mitchell a letter marked "Second Request," requesting that he provide a written response and documentation regarding questions about his employment with Pre-Paid Legal and the funds that were withdrawn from CN's checking account, as described above in paragraphs 5 through 13, pursuant to and in accordance with the provisions of FINRA Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Mitchell's CRD Address. The first class and certified mailings were not returned to the Staff. The certified return receipt was also not returned to the Staff. The Track and Confirm website from the United States Postal Service

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showed that the certified letter was delivered on March 3, 2010 in Streetsboro, Ohio.

17. Mitchell failed to respond to each and all of the requests for documents and information described in paragraphs 15 and 16 above, and the time for Mitchell to respond has passed.

18. The aforementioned acts, practices and conduct constitute separate and distinct violations of FINRA Rules 2010 and 8210 by Mitchell.

RELIEF REQUESTED

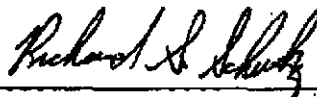
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including monetary sanctions, and;
- B. order that 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

December 3, 2010

Date



Richard S. Schultz, Esq. Senior Regional Counsel
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