

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Michael A. Nemcik
(CRD No. 5405918),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009017374501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On February 12, 2009, while Respondent Michael A. Nemcik (hereinafter, "Respondent" or "Nemcik") was registered with FINRA as a General Securities Representative through an association with member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), he executed a purchase of \$8,000 of shares in the Dreyfus Total Return Advantage Fund in the account of Merrill Lynch customer SG without her knowledge or consent, in violation of FINRA Rule 2010.
2. Nemcik also failed to respond to requests for information sent to him pursuant to FINRA Rule 8210 by FINRA District 5 Member Regulation staff ("District 5 Staff") on July 7, 2009, July 24, 2009, and August 18, 2009. District 5 Staff's requests sought information about Nemcik's dealings with SG in general and additional details about the February 12, 2009 unauthorized purchase that Nemcik did not provide in

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the April 22, 2009 statement he provided to FINRA. By failing to respond to District 5 Staff's requests for information, Nemcik violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Nemcik was associated with a FINRA member and registered with FINRA as an Investment Company/ Variable Contracts Products Representative from September 24, 2007 through February 18, 2009. He also was registered with FINRA as a General Securities Representative from June 17, 2008 through February 18, 2009.
4. Nemcik has not been associated with a FINRA member since February 18, 2009.
5. Nemcik 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 is filed within two years of the date on which he was last associated with a FINRA member.

FIRST CAUSE OF ACTION

(Unauthorized Transaction in a Customer Account)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. SG opened an Individual Retirement Account ("IRA") with Merrill Lynch on June 2, 2004 (hereinafter, "the Account"). The Account was initially serviced by Merrill Lynch General Securities Representative JO. Following JO's departure from Merrill Lynch in September 2008, Nemcik was assigned as broker for the Account.

8. On February 12, 2009, Nemcik executed in the Account a purchase of \$8,000 of shares in the Dreyfus Total Return Advantage Fund. The purchase was funded with available money market funds.
9. SG had never granted Nemcik discretionary trading authority, and she did not authorize him to purchase shares in the Dreyfus Total Return Advantage Fund. Indeed, before executing the February 12, 2009 purchase, Nemcik had never met, spoken to, or corresponded with SG.
10. By executing the purchase of shares in the Dreyfus Total Return Advantage Fund without SG's knowledge or consent, Nemcik violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Failure to Respond to a FINRA Rule 8210 Request for Information)

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.
12. On February 18, 2009, SG sent an email to Nemcik's Merrill Lynch supervisor, SF, alleging that Nemcik had executed the February 12, 2009 purchase in the Account without her knowledge or permission.
13. On March 12, 2008, FINRA received a Form U5 from Merrill Lynch reporting that:
"Nemcik's employment was terminated on February 18, 2009 after the firm concluded that he exercised discretion in a client's account."
14. On April 1, 2009, FINRA Preliminary Investigative Unit staff ("PIU Staff") sent a letter to Nemcik requesting, pursuant to FINRA Rule 8210, that he provide a signed

statement responding to the allegation in the Form U5 that he exercised discretion in a client's account. The letter requested a response by May 1, 2009. The letter was addressed to Nemcik at his most recent residential address as reflected in the records of the Central Registration Depository: [REDACTED] (hereinafter, "CRD Address"). The letter was sent via first class mail and certified mail, return receipt requested.

15. On or about April 27, 2009, PIU Staff received a letter from Nemcik, dated April 22, 2009 and signed by him, stating, in pertinent part: "The allegations made that I, Michael A. Nemcik[,] exercised discretion in a clients [sic] account are true."
16. On June 12, 2009, PIU Staff referred the case to District 5 Staff for further investigation.
17. On July 7, 2009, District 5 Staff sent a letter Nemcik requesting, pursuant to FINRA Rule 8210, that he provide additional information concerning the transaction at issue and information about his dealings with SG in general. The letter requested that Nemcik respond by July 21, 2009. The letter was addressed to Nemcik at the CRD Address and sent via first class mail and certified mail, return receipt requested. The certified mailing was returned to the District 5 office on July 30, 2009, marked "Unclaimed." The first class mailing was returned to the District 5 office on August 31, 2009, marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward."
18. On July 24, 2009, District 5 Staff sent a second letter to Nemcik, reiterating the July 7, 2009 request for information and directing Nemcik to respond by August 7, 2009. The letter was addressed to Nemcik at the CRD Address and sent via first class mail

and certified mail, return receipt requested. The certified mailing was returned to the District 5 office on August 17, 2009, marked "Unclaimed." The first class mailing was returned to the District 5 office on August 31, 2009, marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward."

19. On July 31, 2009, District 5 Staff conducted a search on Lexis-Nexis for a more recent residential address for Nemcik, but none more recent than the CRD Address was found.
20. On August 18, 2009, District 5 Staff sent a third letter to Nemcik, reiterating the July 7, 2009 request for information and directing Nemcik to respond by September 1, 2009. The letter was addressed to Nemcik at the CRD Address and sent via first class mail and certified mail, return receipt requested. The first class mailing was returned to the District 5 office on August 31, 2009, marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward." The certified mailing was returned to the District 5 office on September 10, 2009, marked "Unclaimed."
21. To date, District 5 Staff has received no response from Nemcik to its July 7, 2009, July 24, 2009, and August 18, 2009 letters.
22. By failing to respond to requests for information made pursuant to FINRA Rule 8210 by District 5 Staff, Nemcik violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

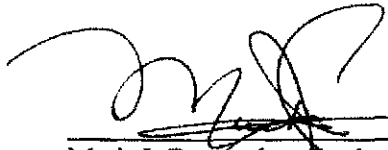
WHEREFORE, the Department respectfully requests that the Panel:

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

- B. order that Respondent Michael A. Nemcik 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: May 12, 2010



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