

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSHUA ALBERT GALIANI
(CRD No. 2864225),

Respondent.

Disciplinary Proceeding
No. 2009017619001

Hearing Officer – LBB

DEFAULT DECISION

May 31, 2011

Respondent Joshua Albert Galiani is barred from associating with any FINRA member firm in any capacity for making false representations, creating fictitious account summaries, and providing the fictitious summaries to a customer, in violation of NASD Conduct Rule 2110 and IM-2310-2.

Appearances

Lynn M. Kaseta, Esq., Regional Counsel, Woodbridge, New Jersey, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the one-cause Complaint in this disciplinary proceeding on February 3, 2011, charging Respondent Joshua Albert Galiani ("Respondent") with making false representations to an elderly customer, and with creating

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fictitious account summaries and providing them to the customer, in violation of NASD Conduct Rule 2110 and IM-2310-2.¹

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions on April 20, 2011, to which Respondent did not respond. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted and Enforcement's motion is granted.²

I. Respondent

Respondent first became registered with FINRA as a general securities representative in 1997. From April 2003 until September 14, 2009, Respondent was registered as a general securities representative through FINRA member firm Peterson Investments, Inc. ("Firm"). Respondent has not been registered with a FINRA member firm since September 14, 2009. Complaint ¶¶ 1-3; Decl. ¶¶ 5-8; CX-1.

Although Respondent is not registered with a 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 termination of his

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). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of the alleged violation. The applicable rules are available at www.finra.org/rules.

² 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 includes the Department of Enforcement's Declaration Supporting Its Motion for Entry of Default Decision, and supporting documentation that is attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited herein as "CX-____."

registration with a member firm, and it charges him with misconduct while he was associated with a member firm.

II. Respondent's Default

On February 3, 2011, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail at his last known residential address, as reflected in the Central Registration Depository ("CRD Address"). Decl. ¶ 15. According to the Postal Service's records, the certified mailing was delivered to Respondent on February 7, 2011. The first-class mailing was not returned to Enforcement. Decl. ¶ 17. Respondent did not answer or otherwise respond to the Complaint.

On March 4, 2011, Enforcement served Respondent with the Complaint and Second Notice of Complaint by first-class and certified mail at his CRD Address. Enforcement received a signed return receipt from the Postal Service on March 8, 2011. The signature on the return receipt is not clear, but it appears to be Respondent's signature. The first-class mailing was not returned to Enforcement. Decl. ¶¶ 19-21; CX-3. 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, Respondent defaulted.

III. Violation

A. Facts

From 2005 through 2007, Respondent was the broker of record for elderly customer R.C.'s securities accounts at the Firm. During this period, Respondent engaged in an investment strategy that resulted in a principal loss of \$662,108 in R.C.'s accounts. Complaint ¶¶ 6-7. R.C. primarily relied on Respondent's verbal representations regarding the performance of his

accounts and was unaware of the decline in the balances in his accounts. Respondent repeatedly told R.C. to disregard the confirmations and statements sent by the Firm, telling R.C. that the majority of his money was held in a third account, which Respondent described to R.C. as an “institutional account” that was not reflected on the documents sent by the Firm.

Complaint ¶¶ 8-9.

R.C. demanded that Respondent provide statements for the “institutional account.” On about October 30, 2007, Respondent created and provided to R.C. two fictitious Firm account summaries that overstated R.C.’s actual holdings at the Firm by approximately \$600,000.

Complaint ¶¶ 10-11. On that same date, Respondent also created and provided to R.C. a fictitious account statement for the “institutional account” reflecting a purported value of \$682,861.55. Respondent fabricated the institutional account statements using an account number that related to a closed account previously held by a relative of Respondent.

Complaint ¶¶ 12-14.³

B. Respondent Violated NASD Conduct Rule 2110 and IM-2310-2

NASD Conduct Rule 2110 requires that members “shall observe high standards of commercial honor and just and equitable principles of trade.” Falsification of documents is unethical conduct that violates Conduct Rule 2110. *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *17 (Aug. 22, 2008). “Creating a document that misrepresents the true state of a customer’s account ‘is the antithesis of a registered representative’s [duty to uphold] high standards of commercial honor,’ and a violation of NASD Rule 2110.” *Dep’t of Enforcement v. Cody*, No. 2005003188901, 2010 FINRA Discip. LEXIS 8, at *51 (N.A.C. May 10, 2010), *appeal docketed*, SEC Dkt. 3-13932 (June 10, 2010) (citation

³ FINRA staff commenced its investigation of this matter after R.C. filed a customer complaint alleging that Respondent had mishandled the customer’s accounts. Decl. ¶ 9.

omitted). IM-2310-2 requires all registered representatives to deal fairly with customers.

IM 2310-2(b)(4)(B) states, that “fraudulent activities, such as forgery, non-disclosure or misstatement of material facts ... have been found in violation of Association Rules.”

The allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Conduct Rule 2110 and IM-2310-2 by creating false documents, providing false documents to a customer, and making misrepresentations to a customer.

IV. Sanctions

The FINRA Sanction Guideline for forgery and falsification of records recommends a suspension of up to two years where mitigating factors exist, and a bar in egregious cases.⁴ Enforcement seeks a bar, which is the appropriate sanction.

Here, there are no mitigating factors, but there are substantial aggravating factors. Respondent has not accepted responsibility for his violation, but instead has offered a far-fetched explanation for the existence of the false statements. At Respondent’s on-the-record interview, he testified that R.C. had created the false documents to frame Respondent because the customer was upset with the losses in his account. He also falsely testified that he regularly spoke to R.C. and that the customer was aware of all the activity in the accounts in question.⁵ Respondent’s egregious conduct and his false statements to FINRA support the imposition of a bar.⁶

⁴ *FINRA Sanction Guidelines* at 37 (2011). The Sanction Guidelines also recommend consideration of a fine, but in light of imposition of the bar, no fine is imposed.

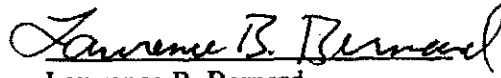
⁵ See Motion for Entry of Default Decision and Request for Sanctions, at page 4.

⁶ The customer filed an arbitration against Respondent and his firm, which was settled with a payment to the customer of \$500,000, with a contribution to the settlement of \$5,000 by Respondent. See CX-1, Disclosure Occurrence Composite at page 4. Due to the resolution of the customer’s arbitration claim, restitution is not appropriate. See *Dep’t of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *54 (N.A.C. Feb. 12, 2007). The Department of Enforcement is not seeking restitution.

V. Conclusion

Respondent Joshua Albert Galiani is barred from associating with any FINRA member firm in any capacity for making false representations to a customer, creating fictitious account summaries, and providing the fictitious summaries to a customer, in violation of NASD Conduct Rule 2110 and IM-2310-2.

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


Lawrence B. Bernard
Hearing Officer

Copies to: Joshua Albert Galiani (*via overnight courier and first-class mail*)
Lynn M. Kaseta, Esq. (*via first-class and electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Joshua Albert Galiani
(CRD No. 2864225),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009017619001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Joshua Albert Galiani (Galiani) prepared fictitious account documents and provided them to an elderly customer to hide the substantial losses in that customer's account. He also made material false oral representations to that customer concerning the value of his investments. This conduct was in violation of NASD Conduct Rule 2110 and IM-2310-2.¹

RESPONDENT AND JURISDICTION

2. Galiani first became registered with FINRA as a General Securities Representative on May 16, 1997.
3. From April 8, 2003 to September 14, 2009, Galiani was registered in the same capacity though member firm Petersen Investments, Inc. (Firm).

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). Following the consolidation, FINRA began developing a new consolidated rulebook, the first phase of which became effective on December 15, 2008. This Complaint, however, refers to and alleges violations of NASD Conduct Rules that were in effect at the time of Galiani's misconduct.

4. Although Respondent has not been associated with a FINRA member firm since September 14, 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) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

CAUSE OF ACTION

False Representations to Customer and Fictitious Account Statements (NASD Conduct Rule 2110 and IM-2310-2)

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. From 2005 through 2007 (the relevant time period), Galiani was the broker of record for elderly customer RC's securities accounts at the Firm.
7. During the relevant time period, Galiani engaged in an investment strategy that resulted in a principal loss of \$662,108 in RC's account.
8. RC primarily relied on Galiani's verbal representations regarding the performance of his accounts and was unaware of the decline in his account balances.
9. Galiani repeatedly told RC, throughout the relevant time period, to disregard the confirmations and statements sent to him by the Firm because Galiani claimed that the majority of RC's money was held in a third account, which he described to RC as an "institutional account," that was not reflected on such documents.
10. RC subsequently demanded that Galiani provide him with statements for the "institutional account."
11. On or about October 30, 2007, Galiani created and provided RC with two fictitious Firm account summaries that overstated RC's actual holdings at the Firm by approximately \$600,000.

12. On that same date, Galiani also created and provided RC with a fictitious account statement for the "institutional account," reflecting a purported value of \$682,861.55.
13. The "institutional account" was a complete fabrication by Galiani. No such account existed.
14. The account number listed on the "institutional account" statement related to a closed account previously held by a relative of Galiani.
15. By creating false brokerage account documents and making material false representations to a customer, Galiani violated NASD Conduct Rule 2110 and IM-2310-2.

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; and
- 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

Dated: February 3, 2011



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