

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

**PAUL LEON WHITE, II
(CRD No. 4669396),**

Respondent.

**DISCIPLINARY PROCEEDING
No. 2009017798201**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Paul Leon White, II made unsuitable sales of securities to a non-profit animal shelter. The shelter was seeking safe, short-term, liquid securities for the investment of funds including a \$350,000 bequest intended for the construction of a new animal care facility. White recommended that the shelter invest the entire bequest in a tenants-in-common (TIC) interest in undeveloped rural real estate in which White had a personal interest. The shelter has been unable to construct the facility as intended by the donor because the bequest remains tied up in the illiquid TIC investment. In addition, White recommended and effected unsuitable sales of non-listed Real Estate Investment Trusts (REITs) to the shelter, and later failed to execute sell orders for the REITs. White also

000051276 2011

participated in the sale of TIC interests to the shelter and to nine other customers without providing his employer firm with the required notices of his participation.

RESPONDENT AND JURISDICTION

2. White first became registered with FINRA as a General Securities Representative (GSR) in May 2003. During the period of the events at issue, White was associated as a GSR with FINRA member Alternative Wealth Strategies, Inc. (AWSI). White's office was located in Melville, New York. White has not been associated with a member firm since, July 16, 2010, however 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 date upon which his registration was terminated and the Complaint charges him with misconduct committed while he was associated with a FINRA member.

FIRST CAUSE OF ACTION NASD Conduct Rules 2310 and 2110 Unsuitable Recommendations and Sales of REITs

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. Customer LS is a non-profit animal shelter organized as a limited liability company and managed on a volunteer basis by MC. LS and MC were located in [REDACTED] [REDACTED] In 2008, MC approached White for advice concerning the shelter's existing investments in listed, large-cap stocks valued at around \$75,000 and a certificate of deposit in the amount of \$350,000.

5. White recommended that MC sell the shelter's large-cap stocks on September 26, 2008, and invest \$54,000 of the sales proceeds in non-listed REITs.
6. On or around September 29, 2008, White recommended and purchased for the account of the shelter common shares of the following REITs in the respective amounts:
Lighthouse Value Plus REIT, \$15,000; Wells Timberland REIT, \$5,000; Wells REIT II, \$9,000; Grubb & Ellis Healthcare REIT, \$10,000; and US Advisors Strategic Storage Trust REIT, \$15,000.
7. These sales were effected through AWSI.
8. The REITs described in paragraph 6 were non-listed securities for which there was no public market at the time of the sales. They are illiquid investments because of the absence of a public market and because of suitability standards imposed by the issuers that must be satisfied by potential transferees. Although the issuers offered redemption programs for the shares, redemption prices were at varying discounts from estimated per-share values. Accordingly, these REITs were promoted by the issuers as long-term investments.
9. White did not have a reasonable basis to believe that the recommendations to purchase the REITs were suitable for the customer on the basis of its financial status and investment objectives. The customer's needs for liquidity, preservation of capital, safety of principal, and ready access to cash were not met by the REITs that White recommended and sold.
10. By virtue of such conduct, White violated NASD Conduct Rules 2310 and 2110.

SECOND CAUSE OF ACTION
NASD Conduct Rules 2310 and 2110
Unsuitable Recommendation and Sale of TIC Interest

11. The department realleges and incorporates by reference paragraphs 1 through 10 above.
12. The \$350,000 described in paragraph 4 above, which the shelter had invested in a certificate of deposit, was a bequest under the will of a donor who intended that the shelter use the funds to construct a new facility for the care of cats.
13. Upon the maturity of the certificate of deposit, MC sought an alternative investment recommendation from White due to the low rates then available on CDs.
14. On or about September 19, 2008, White recommended and sold to the shelter a security in the amount of \$350,000 consisting of a TIC interest in undeveloped rural real estate.
15. To fund the shelter's JCR TIC purchase, MC was directed by White to write a check for \$195,877 (representing the price of the land) payable to GS and NS (the owners of the property); a check payable to JCR in the amount of \$116,000 deposited into the JCR account, over which White was the sole signatory; a check in the amount of \$3,070 to a North Carolina realtor and a check for \$35,000 made out to White's company Professional Real Estate Advisors, LLC., which was paid to White as commission/compensation for his services in connection with the JCR TIC transaction.
16. Earlier in 2008, White, through John Cline Reservoir, LLC (JCR), a limited liability company that he owned and managed, had entered into agreements to purchase a tract of approximately 414 acres in Cleveland County, North Carolina.
17. White represented to potential investors that a new reservoir was to be flooded on property adjacent to the 414-acre tract. White proposed to develop some of the tract as a

new community consisting of lake front private docks and homes, a marina, a community center with shopping and dining, a continuing care retirement community and a game preserve.

18. White, through JCR, offered TIC undivided fractional interests to investors under agreements which provided that the owners would lease the property at all times to John Cline Reservoir Management LLC, a company to be wholly owned by JCR, and that no owner would have the right to occupy or use the property at any time.
19. In addition, the agreements provided (i) that JCR retained an option to repurchase the property after one year and before five years from the closing at the price paid by the buyer plus five percent annual appreciation, and (ii) that JCR would pay to the buyer a seven percent APR repurchase option on a monthly basis.
20. The TIC interest sold to the shelter under the agreements described in the preceding paragraphs was a security as such term is defined in the Securities Act of 1933 and the Securities Exchange Act of 1934.
21. White did not have a reasonable basis to believe that the recommendation to purchase the TIC interest was suitable for the customer on the basis of its financial status and investment objectives. The shelter's needs for liquidity, preservation of capital, ready access to cash, and safety of principal were not met by the TIC interest that White recommended and sold. The shelter has been unable to construct the cat care facility intended by the donor of the \$350,000 because the funds are tied up in the TIC investment.
22. By virtue of such conduct, White violated NASD Conduct Rules 2310 and 2110.

THIRD CAUSE OF ACTION
FINRA Rule 2010
Refusal to Process Sell Orders

23. The Department realleges and incorporates by reference paragraphs 1 through 22 above.
24. On or about January 28, 2009, MC instructed White to sell the REITs owned by the shelter described in paragraph 6 above.
25. On or about January 30, 2009, White acknowledged receipt of the sell instructions and informed MC that the shelter would receive a check for the sale proceeds within one to two weeks.
26. On or about February 11, 2009, White informed MC that he had not yet effected the sales and that he would not process the transactions unless MC supplied a statement signed by "a psychologist, doctor, attorney or any other professional that has known [MC] for five years" attesting to MC's "mental capacity."
27. MC, a person of legal capacity, refused to provide White with the demanded statement of mental capacity.
28. White refused to process the sell orders.
29. By virtue of such conduct, White violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
NASD Conduct Rules 3040 and 2110, and FINRA Rule 2010
Selling Away

30. The Department realleges and incorporates by reference paragraph numbers 1-29 above.
31. Between August 2008 and April 2009, White participated in the sale of TIC interests in the North Carolina property by JCR to LS, as described above, and to nine other

customers of his employer firm, AWSI, namely, AA, TS, ES, DD, SA, SS, HI, PM, and PT.

32. The sales, totaling \$3,700,000, were outside the course or scope of White's employment with AWSI.
33. The investments by all ten customers were subject to the terms and conditions described in paragraphs 18 and 19 above. In particular, no investor retained the right to use or occupy the property subject to the TIC interests.
34. The TIC interest investments purchased by all ten customers were securities as such term is defined in the Securities Act of 1933 and the Securities Exchange Act of 1934.
35. In connection with the sales described in paragraph 30 above, White collected selling compensation in the amount of approximately \$1,653,958.
36. White participated in the ten TIC investment transactions without providing his employer firm with prior written notice describing the proposed transactions.
37. By virtue of such conduct, White violated NASD Conduct Rules 3040 and 2110 and FINRA Rule 2010.

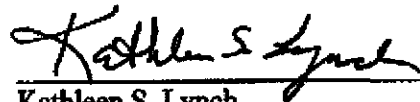
II. RELIEF REQUESTED

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 including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- 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.

Date: September 14, 2010



Kathleen S. Lynch
Senior Regional Counsel
FINRA Department of Enforcement
Two Jericho Plaza
Jericho, New York 11753
Tel: (516) 949-4217
Fax: (516) 949-4201
kathleen.lynch@finra.org

Mark P. Dauer
Deputy Chief Litigation Counsel
FINRA Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
Tel: (504) 412-2405
Fax: (202) 721-6527
mark.dauer@finra.org