

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM HOWARD IRVING
(CRD No. 1541064)

Respondent.

Disciplinary Proceeding
No. 20090178566-01

Hearing Officer – MAD

DEFAULT DECISION

February 16, 2011

For failing to satisfy an arbitration award, in violation of Conduct Rules 2110 and 2010, and IM-10100 of FINRA's Code of Arbitration Procedure, Respondent is fined \$10,000 and suspended from associating with any member firm in any capacity (1) until he satisfies the award and (2) for 30 business days thereafter. If Respondent fails to pay the award in full within 12 months, the suspension will convert to a bar.

Appearances

Elissa Meth Kestin, Senior Regional Counsel, and Kathryn M. Wilson, Principal Regional Counsel, New York, N.Y., for the Department of Enforcement.

No appearance by or on behalf of William Howard Irving.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on October 5, 2010. The Complaint charges Respondent William Howard Irving ("Irving"), a former registered representative with Oppenheimer & Co.,

000054048 2011

Inc. ("Oppenheimer"), with failing to comply with the terms of an arbitration award, in violation of Conduct Rules 2110 and 2010, and IM-10100 of FINRA's Code of Arbitration Procedure.¹

Irving defaulted by failing to answer or otherwise respond to the Complaint. On December 31, 2010, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions with the Office of Hearing Officers, together with the Declaration of Kathryn M. Wilson ("Wilson Decl.") and 18 exhibits. Irving did not respond to the motion.²

II. Background and Origin of Investigation

Irving first entered the securities industry in September 1986. From January 3, 2003, through March 29, 2006, Irving was employed with Oppenheimer as a General Securities Representative.³ Irving was registered with FINRA as a General Securities Representative through his association with another member firm from March 28, 2006, through January 19, 2010.⁴ That member firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Irving's behalf.⁵

The FINRA's Member Regulation staff began its investigation upon receipt of a complaint letter from Oppenheimer, dated April 3, 2009.⁶ The letter stated that, in June 2008,

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 conduct rules that were in effect at the time of Respondent's misconduct. Conduct Rule 2110 was renumbered as Rule 2010 in the Consolidated Rulebook without substantive change. 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, which are deemed admitted, as well as additional materials filed by Enforcement.

³ Wilson Decl. ¶ 7; CX-1, at 2.

⁴ Wilson Decl. ¶ 8; CX-1, at 1.

⁵ Wilson Decl. ¶ 9; CX-2.

⁶ Wilson Decl. ¶ 23; CX-9. There are two paragraphs with the number 23 in the Declaration. This cite references the first paragraph 23.

Oppenheimer obtained an arbitration award against Irving in the amount of \$20,990.34, and that Irving failed to pay the award in full.⁷ At the time of the letter, Irving had made only two \$500 payments.⁸

III. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after January 19, 2010, the date FINRA terminated Irving's registration, and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm.⁹

IV. Irving's Default

On October 5, 2010, Enforcement served Irving with the Notice of Complaint and Complaint by certified mail (return receipt requested) and first-class mail sent to his residential address recorded in the Central Registration Depository ("CRD").¹⁰ The first-class mailing was not returned.¹¹ The United States Postal Service ("USPS") returned the certified mailing marked "unclaimed."¹²

On November 8, 2010, Enforcement served Irving with the Second Notice of Complaint and Complaint by certified mail (return receipt requested) and first-class mail sent to his CRD

⁷ Wilson Decl. ¶ 23; CX-9.

⁸ Wilson Decl. ¶ 23; CX-9.

⁹ See Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹⁰ Wilson Decl. ¶¶ 11-12; CX-3-5.

¹¹ Wilson Decl. ¶ 13.

¹² *Id.* ¶ 14; CX-6.

address.¹³ Again, the first-class mailing was not returned.¹⁴ The USPS returned the certified mailing marked “unclaimed.”¹⁵ To date, Irving has not responded to the Complaint.

The Hearing Officer finds that Irving received constructive notice of this proceeding.¹⁶ Accordingly, the Hearing Officer finds that Irving defaulted by failing to answer or otherwise respond to the Complaint.

V. Findings of Fact and Conclusions of Law

On March 23, 2007, Oppenheimer filed an arbitration of with NYSE Arbitration against Irving.¹⁷ On June 11, 2008, FINRA Dispute Resolution notified Irving that the arbitrators ordered him to pay Oppenheimer \$20,990.34.¹⁸ On July 14, 2008, Oppenheimer notified Irving that the award was past due and requested payment within five business days.¹⁹ On September 3, 2008, Oppenheimer and Irving arranged a payment plan, whereby Oppenheimer would accept \$1,500 per month until the award was paid in full.²⁰ In October and December 2008, Irving sent Oppenheimer two checks for \$500 each.²¹ On April 1, 2009, Irving sent Oppenheimer a check for

¹³ Wilson Decl. ¶ 17; CX-7.

¹⁴ Wilson Decl. ¶ 18.

¹⁵ *Id.* ¶ 19; CX-8.

¹⁶ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (N.A.C. Dec. 9, 2003) (Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁷ Wilson Decl. ¶ 23; CX-10. The Wilson Declaration contains two number 23 paragraphs. This reference is to the second paragraph 23.

¹⁸ Wilson Decl. ¶ 24; CX-10.

¹⁹ Wilson Decl. ¶ 25; CX-11.

²⁰ Wilson Decl. ¶ 26.

²¹ Wilson Decl. ¶ 30; CX-14.

\$400.²² Irving has not made any additional payments to Oppenheimer since April 1, 2009.²³

Irving has failed to pay the full award, and currently owes Oppenheimer \$19,590.²⁴

The Hearing Officer finds that the foregoing facts establish that Irving failed to pay the full arbitration award and thereby violated Conduct Rules 2110 and 2100, and IM-10100 of FINRA's Code of Arbitration Procedure.

VI. Sanctions

The FINRA Sanction Guidelines ("Guidelines") for failure to pay an arbitration award recommend a fine of at least \$5,000, and a suspension in all capacities until the arbitration award is satisfied plus at least an additional 30 business days.²⁵ In egregious cases, the Guidelines recommend a bar.²⁶ The principal considerations specified in the Guidelines include: (1) whether any portion of the arbitration award has been paid; (2) whether a good-faith attempt has been made to satisfy the award in whole or in part, and the promptness of any such effort; and (3) whether any settlement or payment schedule that has been negotiated has been met.²⁷

Here, between June and October 2008, Irving failed to make any payments to Oppenheimer. While Irving and Oppenheimer agreed to a payment plan, he did not comply with the payment schedule. He has not paid a substantial portion of the award. Irving's efforts to pay the award were inconsistent, as demonstrated by his three payments between October 2008 and April 2009.

²² Wilson Decl. ¶ 32; CX-14.

²³ Wilson Decl. ¶ 37.

²⁴ Wilson Decl. ¶ 38; CX-9, CX-14, CX-17.

²⁵ *FINRA Sanction Guidelines* 18 (2010), www.finra.org/sanctionguidelines.

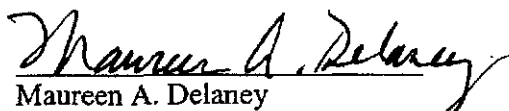
²⁶ *Id.*

²⁷ *Id.*

Enforcement recommends that Irving be fined \$10,000 and suspended from associating with any FIRNA member (1) until Irving satisfies the award by making payment in full and (2) for 30 days after satisfaction of the award. Enforcement also recommends that if Irving does not pay the award in full within 12 months, Irving's suspension would convert to a bar. The Hearing Officer finds that Enforcement's recommendation is appropriate under the facts and circumstances of this case.

VII. Order

William Howard Irving is fined \$10,000 and suspended from associating with any FINRA member firm (1) until he satisfies the award by making payment in full to Oppenheimer and (2) for 30 business days after the satisfaction of the award. The suspension shall begin at the opening of business on March 21, 2011. If Irving fails to pay the award in full within 12 months of the date of this order, his suspension will convert to a bar.²⁸


Maureen A. Delaney
Hearing Officer

Copies to:

William Howard Irving (*via overnight and first class mail*)
Elissa Meth Kestin, Esq. (*via electronic and first class mail*)
Kathryn M. Wilson, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

²⁸ Cf. *Robert Tretiak*, Exchange Act Rel. No. 47534, 2003 SEC LEXIS 653 (Mar. 9, 2003) (affirming respondent's suspension until the arbitration award was paid in full with the condition that the suspension would convert to a bar if respondent failed to pay).

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM HOWARD IRVING
(CRD No. 1541064)

Respondent.

DISCIPLINARY PROCEEDING
No. 20090178566-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent William Howard Irving failed to comply with the terms of a June 3, 2008 arbitration award that was ordered against him and in favor of Oppenheimer & Co. Inc. (BD No. 249) by a New York Stock Exchange Arbitration panel in *Oppenheimer & Co., Inc. v. William H. Irving*, NASD No. 2007-016702 (NYSE Arb. June 3, 2008)(the Award).
2. At the time of the Award, Irving was registered with FINRA as a General Securities Representative through an association with another member firm.
3. The Award ordered Irving to pay Oppenheimer \$20,990.34.
4. While Irving made three small payments (on October 15, 2008, December 21, 2008, and April 1, 2009) toward the Award, he has not paid \$19,590.34.

5. Irving has not fully paid what he owes Oppenheimer under the Award. Therefore, he violated FINRA Rule 2010, NASD Conduct Rule 2110 and IM-10100 of NASD's and FINRA's Code of Arbitration Procedure.

RESPONDENT AND JURISDICTION

6. Irving first became registered with FINRA (formerly known as NASD), through an association with a member firm (Firm 1), as a General Securities Representative on September 16, 1986. He remained registered through Firm 1 until November 20, 1989.
7. From November 21, 1989 through January 3, 2003, Irving was registered with FINRA as a GSR through associations with several member firms.
8. From January 3, 2003 through March 27, 2006, Irving was registered with FINRA as a GSR through an association with Oppenheimer.
9. From March 28, 2006 through January 13, 2010, Irving was registered with FINRA as a GSR through an association with another member firm.
10. Although Irving has not been associated with a FINRA member firm since January 13, 2010, 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) this Complaint is 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

*Failure to Comply With Terms of a NYSE Arbitration Settlement Agreement
FINRA Rule 2010, NASD Conduct Rule 2110 and
IM-10100 of NASD's and FINRA's Code of Arbitration Procedure*

11. The Department re-alleges and incorporates by reference paragraphs 1 through 10 above.
12. On or about March 23, 2007, Oppenheimer filed a claim with NYSE Arbitration against Irving.
13. On or about June 3, 2008, the arbitrators ordered Irving to pay Oppenheimer \$20,990.34.
14. Irving was registered with FINRA through an association with a FINRA member firm when the arbitration was filed and when the arbitration panel issued the Award.
15. Irving made three payments to Oppenheimer to satisfy the Award. He paid \$400 on April 1, 2009, \$500 on December 21, 2008, and \$500 on October 15, 2008.
16. Irving still owes Oppenheimer \$19,590.34.
17. Irving has not made any payments to Oppenheimer since April 1, 2009.

By reason of the foregoing, Irving has violated FINRA Rule 2010, NASD Conduct Rule 2110 and IM-10100 of NASD's and FINRA's Code of Arbitration Procedure.

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 5, 2010


Elissa Meth Kestin, Senior Regional Attorney
FINRA Department of Enforcement
District 10
One Liberty Plaza, 48th Floor
New York, N.Y. 10006
(212) 858-4702 (Phone)
(212) 858-4770 (Fax)
Elissa.Meth@FINRA.org