

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

Department of Enforcement,

Complainant,

v.

David A. Schams,
CRD No. 1587140,

Respondent.

Disciplinary Proceeding
No. 20090182932

Hearing Officer Sara Nelson Bloom

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 3, 2011

INTRODUCTION

Disciplinary Proceeding No. 20090182932 was filed on September 1, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Prior to the September 1, 2011 filing, on May 19, 2011, a Letter of Acceptance, Waiver and Consent ("AWC") was sent to David A Schams ("Schams" or "Respondent") for signature. A Complaint was issued on May 27, 2011 after Schams failed to execute the AWC. On September 8, 2011, an Order Granting Consent Motion to Amend the Complaint was granted. Respondent Schams submitted an Offer of Settlement (Offer) to Complainant dated September 28, 2011. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

000035291-2011

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

On May 30, 2009 and June 2, 2009, FINRA received two Forms U-5 from OneAmerica Securities which reported that Respondent's employment had been terminated. FINRA commenced its investigation and learned that Respondent admitted that he accepted a \$40,000 loan from an elderly customer and acted as power of attorney for that customer. Additionally Respondent had been named as a beneficiary in the customers Will.

On May 27, 2011, FINRA filed a Complaint against Respondent. On August 17, 2011, the Office of Disciplinary Affairs approved the issuance of the Amended Formal Complaint against Respondent. On September 1, 2011, the Amended Complaint was filed with the Office of Hearing Officers along with a Consent Motion to Amend the Complaint. On September 8, 2011 the Office of Hearing Officers granted the Consent Motion to Amend the Complaint submitted by FINRA and Respondent. Respondent was ordered to file an Answer to the Amended Complaint on or before October 6, 2011.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

During the relevant period, the firm's policies included prohibitions against registered representatives exercising or maintaining discretionary authority or power of attorney over customer accounts and issuing promissory notes, loans or other similar forms of debt for customers without the express written consent of the Firm's Compliance Department.

GB was born in [REDACTED] and EB was born in [REDACTED]. GB and EB were married and resided in Alma, Wisconsin.

GB was a retired business owner and EB was a retired bookkeeper.

GB and EB met Schams in the mid-1980's and became his customer in December 2006. Schams continued to handle their accounts at the Firm throughout the relevant period.

On June 6, 2007, the GB and EB executed powers of attorney appointing each other primary agent attorney-in-fact for their respective financial matters. GB and EB also appointed Schams as their alternative agent attorney-in-fact if either one of them could not serve in this capacity.

Schams failed to notify the Firm about the receipt of the power of attorney over GB and EB or receive approval from the Firm for this appointment.

On or about November 2007, EB succumbed to cancer. By June 2008, GB, 86, had been diagnosed with Alzheimer's disease.

On or about September 8, 2008, the Office of the Commissioner of Insurance for the State of Wisconsin ("OCI"), received a complaint from GB's cousin, X, alleging that Respondent may have been taking advantage of GB.

It was not until the initiation of an inquiry by OCI that Schams' status as power of attorney for GB and EB was discovered by the firm.

As a result of the foregoing, Schams violated NASD Rule 2110 and FINRA Rule 2010 by maintaining power of attorney over GB's and EB's accounts at the Firm without obtaining express written consent from the Firm.

During the relevant period, the Firm's Compliance policies prohibited registered representatives from borrowing money or accepting a loan from a customer of the Firm. Registered representatives were also prohibited from issuing or transacting promissory notes, loans or other similar forms of debt for customers without the express written consent of the Compliance Department.

On or about June 6, 2007, GB and EB executed separate wills leaving their estates to one another and, upon the death of the survivor, Schams was to receive approximately \$90,000 from their estate.

On June 10, 2008, Schams drafted a note which GB signed that stated:

I, GB agree to make loans to David A. Schams up to approximately one half the value of his anticipated inheritance under my Will. These loans, if any, shall be paid back to my estate at the time of my death or deducted from the value of David's share of the inheritance. These loans shall be interest free in exchange for Dave helping with my care.

On August 5, 2008, Schams took a \$20,000 interest-free loan from GB, without signing a promissory evidencing the loan. This loan was made to Schams through a check made out to GB, from GB's brokerage account at the Firm. GB signed the back of the check and Schams endorsed the check as power of attorney

On December 24, 2008, Schams took another \$20,000 interest-free loan from GB, without signing a promissory note evidencing the loan. This loan was made to Schams through a check made out to GB, from GB's brokerage account at the Firm which Schams deposited into Schams' personal account at Associated Bank.

Schams did not inform the Firm about the loans or receive written approval from the Firm to accept the loans from GB.

In a final decision dated August 6, 2010, OCI revoked Schams' permanent intermediary's license and ordered that Schams pay a forfeiture of \$20,000 to the State of Wisconsin for, among other things, engaging in self dealing as an attorney in fact for GB; violating s. Ins. 6.60(2)(b), Wis. Adm. Code when Schams knowingly became a beneficiary of the annuities issued to GB, who was his customer, when he did not have an insurable interest in GB; violating the business practice rule when he entered into the transaction with GB where he drafted and had GB sign a document which purported to have GB "agree to make loans" to Respondent "up to approximately one half the value of his anticipated inheritance under my Will." The Order also stated that the transaction was not a "bona fide arm's length business transaction where a customer is either qualified to understand and assess the transaction or has been advised or represented in the transaction by a qualified individual who is not the agent or affiliate." DFI SEC 4.06(2)(a), Wis. Adm. Code deems borrowing money from a customer "a dishonest or unethical business practice or taking advantage of a customer by an agent." OCI stated that Respondent's "loan" from GB is also a violation of DFI SEC 4.06(2)(a) and thus a violation of Ins. 6.60(2)(c), Wis. Adm. Code.

As a result of the foregoing, Schams violated NASD Rules 2370 and 2110 by issuing or transacting promissory notes, loans or other similar forms of debt for customers without the express written consent of the Firm.

During the relevant period registered representatives employed at the Firm were required to complete annual Firm compliance questionnaires and submit them to the Firm.

The compliance questionnaires required the registered representatives to certify that their answers were true and correct to the best of their knowledge and that the statements represented an accurate and true disclosure of the registered representatives' business.

On December 27, 2008, Schams completed and submitted an online compliance questionnaire titled "2008 Securities Activity Statement".

In that form, Schams responded in the affirmative to the question, "Do you understand that borrowing money or accepting a loan from a client is prohibited?"

To the question, "Do you understand that depositing client funds in your personal or business account is strictly prohibited?", Schams responded, "Yes".

Schams further responded "No" to the questions, "Are you holding any securities, stock powers, money, or property belonging to a client?", and "Do you accept client checks that are made out to you, endorsed to you personally, or in the name of the DBA?"

This response was false because by December 2008, Schams had accepted two checks from GB and endorsed by Schams.

Finally, Schams answered "No" to the question, "Are you presently managing or handling, in any way, the affairs of any client account on a discretionary basis?"

This response was false since by December 2008, Schams was exercising his power of attorney for GB.

As a result of the foregoing Schams violated FINRA Rule 2010 by falsely answering questions on an annual questionnaire that Schams submitted to the Firm.

Based on the foregoing, Respondent violated NASD Rule 2110 and FINRA Rule 2010 by making material misstatements to his member firm employer in a compliance questionnaire that Schams caused to be submitted to his member firm employer; violated NASD Rule 2110 and FINRA Rule 2010 by accepting power of attorney over a customer's account without the knowledge or approval of his member firm employer; violated NASD Rule 2370 and 2110 and FINRA Rule 3240 and 2010 by accepting two \$20,000 interest-free loans from a customer without the knowledge or approval of his member firm employer.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred from association with any member of FINRA in any capacity. Respondent understands that if he is barred or suspended from associating with

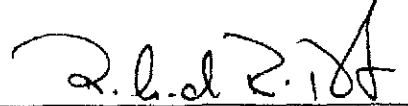
any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Respondent may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311.)

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read "R. Best", is written over a horizontal line.

Richard Best
Chief Counsel
FINRA Department of Enforcement
14 Wall Street-14th Floor
New York, New York 10005
(646) 315-7308
Richard.Best@Finra.org