

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN BABIARZ (CRD No. 3047247),

Respondents.

DISCIPLINARY PROCEEDING
No. 2009018486401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In 2007 and 2008, while registered with FINRA through former member firm Jesup & Lamont Securities Corp (BD. No. 39056) ("J&L"), Respondent John Babiarz settled, or attempted to settle, two separate customer complaints without the knowledge or approval of J&L. In addition, during the period April 2008 through May 2009, Babiarz miscoded order tickets in numerous customers' accounts. In addition, at various times during the period September 2005 through June 2009, Babiarz improperly exercised discretion in three customers' accounts.
2. Accordingly as set forth in greater below, Babiarz violated NASD Conduct Rules 2110, 2510 and 3110 and FINRA Rule 2010.

RESPONDENT(S) AND JURISDICTION

3. Babiarz initially became registered as a general securities representative ("GS") in June 1998 through a FINRA member firm. Thereafter, he became registered through

a different member firm as a general securities principal ("GP") in May 2000. From October 2004 through June 2009, Babiarz was registered as a GS and GP through former member firm Jesup & Lamont Securities Corp (BD. No. 39056) ("J&L"). From October 2009 through September 2011, he was registered as a GS and GP through another member firm. Babiarz is not currently associated with a member firm.

4. Although Babiarz is no longer registered or associated with a FINRA member, 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 effective date of termination of Babiarz's registration with Bishop, Rosen & Co., namely September 1, 2011, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

(Settling Away – FINRA Rule 2010 and NASD Conduct Rule 2010)

5. The Department realleges and incorporates by reference paragraphs 1-5 above.
6. In or around the spring of 2007, J&L customer TT complained to Babiarz about losses he had sustained as a result of Babiarz's handling of his account.
7. Between September 2007 and August 2008, Babiarz settled, or attempted to settle, TT's complaint by paying TT \$11,000 in monthly installments of \$1,000.
8. Babiarz's settlement with TT as described above was made without the knowledge or approval of J&L.

9. In or around March 2008, J&L customer MK complained to Babiarz about losses he had sustained as a result of Babiarz failing to follow instructions.
10. On or about March 25, 2009, Babiarz settled, or attempted to settle, MK's complaint by giving MK a written promise to pay MK the amount of \$8,300 (the "Promissory Note").
11. In or around April 2009, Babiarz defaulted on the Promissory Note payable to MK.
12. Babiarz's settlement with MK as described above was made without the knowledge or approval of J&L.
13. By settling, or attempting to settle, TT's and MK's complaints without the knowledge or approval of J&L, Babiarz violated NASD Conduct Rule 2110 and FINRA Rule 2010.
14. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
(Miscoding Trade Orders – NASD Conduct
Rules 3110 and 2110 and FINRA Rule 2010)

15. The Department realleges and incorporates by reference paragraphs 1-14 above.
16. During the period from April 2006 through May 2009, Babiarz caused over 200 orders for trades in numerous customers' accounts to be coded as unsolicited when in fact the trades were solicited.

17. By coding orders for solicited trades as “unsolicited,” Babiarz caused the books and records, including trade confirmations, of J&L to contain false and erroneous information.
18. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3110 and 2110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

(Exercising Discretion without Written Authorization – NASD Conduct Rules 2510(b) and 2110 and FINRA Rule 2010)

19. The Department realleges and incorporates by reference paragraphs 1-18 above.
20. During the period from September 2005 through September 2006, Babiarz exercised discretion in the account of J&L customer TT without written authorization from the customer or acceptance of the account as discretionary by J&L.
21. During the period from March 2006 through June 2009, Babiarz exercised discretion in the account of J&L customer MK without written authorization from the customer or acceptance of the account as discretionary by J&L.
22. During the period from March 2006 through June 2008, Babiarz exercised discretion in the account of J&L customer RC without written authorization from the customer or acceptance of the account as discretionary by J&L.
23. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2510(b) and 2110 and FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that 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: June 6, 2012



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