

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID A. KENNEDY
(CRD No. 5053081),

Respondent.

Disciplinary Proceeding
No. 20090192761-05

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 17, 2012

Respondent is barred from associating with any FINRA-registered firm in any capacity for cheating on Firm Element continuing education proficiency tests, in violation of FINRA Conduct Rule 2010.

Appearances

David L. Friedman, Esq., for the Department of Enforcement.

No appearance by or on behalf of David A. Kennedy.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on December 2, 2011. The Complaint alleges that Respondent David A. Kennedy (“Respondent”) violated FINRA Conduct Rule 2010 in July 2009, by cheating on Firm Element continuing education proficiency tests while he was associated with MetLife Securities, Inc. (“MetLife”).

Respondent did not answer the Complaint. Accordingly, on February 24, 2012, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”). The Default

Motion is supported by the Declaration of David Friedman, Esq. (“Friedman Decl.”) and six attached exhibits.¹ Respondent did not respond to Enforcement’s Default Motion.

II. Procedural History

Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to his residential address recorded in the Central Registration Depository (“CRD”) on December 2, 2011.² Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested. The United States Postal Service delivered the certified mailing on December 10, 2011.³ Respondent did not answer or otherwise respond to the Complaint.

On January 5, 2012, Enforcement served a Second Notice of Complaint on Respondent by mailing it to his CRD address.⁴ Enforcement sent the Second Notice of Complaint by first-class certified mail, return receipt requested. The United States Postal Service delivered the mailing to the CRD address on January 9, 2012.⁵ The Second Notice of Complaint required Respondent to file an answer with the Office of Hearing Officers on or before January 19, 2012. To date, Respondent has not answered or otherwise responded to the Complaint.

Enforcement provided Respondent with valid constructive notice of this proceeding. Respondent defaulted by failing to answer the Complaint by the deadline specified in the Second Notice of Complaint.

¹ Enforcement’s exhibits are labeled CX-1 through CX-6.

² Friedman Decl. ¶ 15.

³ *Id.* ¶ 16; CX-4.

⁴ Friedman Decl. ¶ 18.

⁵ *Id.* ¶ 19.

III. Findings of Fact and Conclusions of Law

Based on the Respondent's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

A. Background

Respondent entered the securities industry in 2005. From February 2009 until December 11, 2009, Respondent was associated with MetLife. He was registered with FINRA as a General Securities Representative from March 6, 2009, until December 18, 2009.⁶

On August 14, 2009, FINRA received a Uniform Termination Notice for Securities Industry Registration (Form U5), which stated that one of MetLife's operation managers had improperly assisted Respondent and others at MetLife with its Firm Element continuing education proficiency tests.⁷ FINRA opened an investigation based on this information, which led to Enforcement filing the Complaint initiating this disciplinary proceeding.⁸

B. Jurisdiction

FINRA has jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws. Enforcement filed the Complaint within two years after FINRA terminated Respondent's registration, and the Complaint charges him Respondent with misconduct that occurred while he was associated with a FINRA-registered firm.⁹

⁶ CX-1, at 5; CX-2.

⁷ Friedman Decl. ¶ 8.

⁸ *Id.*

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").

C. Respondent's Unethical Conduct

NASD Membership and Registration Rule 1120¹⁰ requires member firms to maintain a continuing education program for their registered persons. Rule 1120 further mandates that such continuing education programs contain two elements: a Regulatory Element and a Firm Element. NASD Rule 1120(b)(2)(A) provides as part of the Firm Element that “[e]ach member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism.” NASD Rule 1120(b)(3) requires covered registered persons included in a member’s continuing education plan to “take all appropriate and reasonable steps to participate in continuing education programs as required by the member.”

MetLife required all of its registered persons to complete an internal, computer-based Firm Element continuing education program annually. MetLife’s program consisted of a series of web-based courses and accompanying proficiency tests.¹¹ Certain courses were pre-assigned to registered individuals based upon the registrations they held at the time of assignment, and the courses were then completed using the firm’s computer system.¹² Respondent was required to participate in MetLife’s Firm Element continuing education program.¹³

In July 2009, Respondent improperly received assistance on MetLife’s Firm Element continuing education proficiency tests from an operations manager at MetLife. Specifically, the operations manager gave Respondent answers to the questions on the proficiency tests, which

¹⁰ Rule 1120, *available at* http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3597. NASD Rule 1120 was renumbered FINRA Rule effective October 17, 2011. *See* FINRA Regulatory Notice 11-33 (July 2011).

¹¹ Compl. ¶ 3.

¹² *Id.* ¶ 4.

¹³ *Id.* ¶ 5.

Respondent used to complete the tests.¹⁴ In addition, Respondent printed out answer sheets for the tests and gave the answers to another registered representative to use while taking the same tests.¹⁵

Respondent violated FINRA Conduct Rule 2010, which requires members, “in the conduct of [their] business, [to] observe high standards of commercial honor and just and equitable principles of trade.”¹⁶ The purpose of Rule 2010 is to protect investors from unethical behavior.¹⁷ “[I]t is well settled that [FINRA’s] disciplinary authority under Rule [2010] is broad enough to cover a wide range of unethical conduct.”¹⁸ Here, Respondent’s cheating on MetLife’s Firm Element continuing education proficiency tests and his providing the answers to the tests to another registered person run afoul of Rule 2010’s high ethical standards.¹⁹ FINRA’s required continuing education program provides protection for the investing public by ensuring that registered persons are qualified to perform the functions they undertake on the public’s behalf.

IV. Sanctions

The FINRA Sanction Guidelines (“Guidelines”) do not specifically address cheating on proficiency tests implement by members under the Firm Element of the continuing education rule. However, the Guidelines do address cheating in the Regulatory Element of continuing

¹⁴ Compl. ¶ 6.

¹⁵ *Id.*

¹⁶ Rule 2010 applies to Respondent through FINRA Rule 0140, which provides that persons associated with a member have the same duties and obligations as a member.

¹⁷ *Dep’t of Enforcement v. Shelley*, No. C3A050003, 2007 NASD Discip. LEXIS 8, at *12 (NAC Feb. 15, 2007) (applying former NASD Rule 2110 that is identical to FINRA Rule 2010).

¹⁸ *Dep’t of Enforcement v. Shelley*, 2007 NASD Discip. LEXIS 8, at *12 (citing *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (concluding that Rule 2110 prohibits conduct that does not directly involve securities or the violation of a specific securities law) and *Daniel D. Manoff*, 55 S.E.C. 1161-63 (2002) (affirming NASD’s finding that respondent’s unauthorized use of a co-worker’s credit card numbers constituted unethical business conduct that violated Rule 2110)).

¹⁹ *Dep’t of Enforcement v. Shelley*, 2007 NASD Discip. LEXIS 8, at *12 (finding that respondent violated Rule 2110 by attempting to cheat on a Series 24 qualification examination).

education, which the Hearing Officer finds sufficiently analogous. For cheating on the Regulatory Element of continuing education, the Guidelines provide that a bar is standard.²⁰ The Guidelines direct adjudicators to consider whether the nature of the material the respondent possessed would not have been helpful on the examination. In this case, Respondent received and used answers to the proficiency tests and then supplied the answers to another MetLife registered representative for use on the same tests. Respondent clearly intended to cheat on the tests and assist others to do the same. The Hearing Officer finds no mitigating factors in the record.

Enforcement recommends that Respondent be suspended for 60 days and fined \$5,000. In reaching this recommendation, Enforcement applied the Guidelines for failure of an individual to comply with the requirements of the Firm Element educational program. However, these Guidelines do not take into consideration Respondent's dishonesty. Respondent did not just fail to complete MetLife's Firm Element program; he cheated on a required element of the program and attempted to help another registered person do the same. The Hearing Officer concludes that this conduct evidences such a complete disregard for FINRA's rules that a bar is necessary to protect the investing public. "The public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable."²¹ Accordingly, the Hearing Officer concludes that a bar is the appropriate sanction in this case.

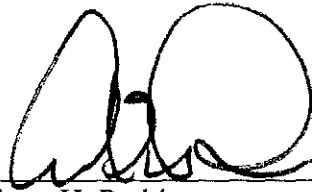
V. Order

David A. Kennedy is barred from associating with any FINRA-registered firm in any capacity for cheating on Firm Element continuing education proficiency tests, in violation of

²⁰ FINRA Sanction Guidelines 40 (2011), www.finra.org/sanctionguidelines

²¹ *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *29 (Aug. 22, 2008) (imposing bar for forgery).

FINRA Conduct Rule 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

David A. Kennedy (*via overnight courier and first-class mail*)
David L. Friedman, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

David A. Kennedy
(CRD No. 5053081),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090192761-05

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During July 2009, while a registered representative with FINRA regulated member MetLife Securities Inc. ("MetLife" or the "Firm"), David A. Kennedy ("Kennedy" or "Respondent") improperly received assistance on Firm Element continuing education proficiency tests by accepting answers to the tests from the Firm's Operations Manager and using those answers to complete the tests. Kennedy also provided the answers to the proficiency tests to another registered representative at the Firm. By engaging in this conduct, Respondent violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. Kennedy entered the securities industry in 2006, and holds Series 7 and 63 licenses. Respondent was employed as a registered representative with MetLife from February 2009 through December 2009. Respondent has not been employed in the securities industry since he left the Firm on December 18, 2009. Although Respondent 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 Respondent's registration with MetLife, namely, December 18, 2009 and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

3. Pursuant to FINRA Membership and Registration Rule 1120(b), Metlife required all registered persons to complete an internal, computer-based Firm Element Continuing Education program on an annual basis. The Firm Element Continuing Education program consisted of a series of web-based courses and accompanying proficiency tests.

4. Certain courses were pre-assigned to registered individuals based upon the registrations that they held at the time of assignment, and the courses were then completed via the internal firm computer system.

5. In February 2009, Kennedy joined the Shreveport, Louisiana, office of the Firm as a registered representative, and was required to participate in Metlife's Firm Element Continuing Education program.

6. During July 2009, Kennedy improperly received assistance on Firm Element continuing education proficiency tests from the Operations Manager for the Monroe and Shreveport, Louisiana, offices of MetLife. Specifically, the Operations Manager gave Kennedy the answers to the questions on the proficiency tests. Kennedy then used those answers to complete the tests. In addition, Kennedy printed out answer sheets for the tests and gave the answers to another registered representative to use while taking the same tests.

**FIRST CAUSE OF ACTION
CONDUCT INCONSISTENT WITH JUST AND EQUITABLE PRINCIPLES OF TRADE
FINRA RULE 2010**

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.

8. FINRA Membership and Registration Rule 1120(b) requires all member firms to maintain a Firm Element "continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism." The Firm Element requires each member firm to provide ongoing training to keep its employees current on industry rules and regulations as well as job and product related subjects. FINRA Rule 1120(b)(3) requires that covered persons must take all appropriate and reasonable steps to participate in the continuing education programs required by the firm.

9. Metlife required that covered persons complete a number of online continuing education programs. In order to comply with Rule 1120(b), a person who is required by his employer firm to complete a particular training module as part of the firm's Firm Element plan must complete the module himself.

10. Rule 2010 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and equitable principles of trade."

11. As described above, Kennedy accepted answers for continuing education proficiency tests from his Operations Manager and used those answers to complete the tests. Kennedy also printed out answer sheets for another registered representative to use while taking the proficiency tests. By doing so, Kennedy engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade and therefore violated FINRA Rule 2010.

RELIEF REQUESTED

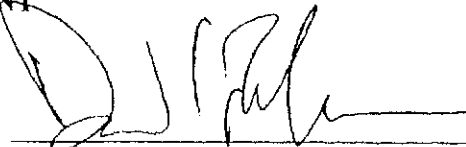
WHEREFORE, the Department respectfully requests that the panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions (including disgorgement and interest) 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:

12/2/11



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