

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MATTHEW M. DOOLEY
(CRD No. 2507851),

Respondent.

Disciplinary Proceeding
No. 20090209303-01

Hearing Officer – Sara Nelson Bloom

AMENDED DEFAULT DECISION¹

November 3, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to provide information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, no additional sanctions were imposed for making unsuitable recommendations, in violation of NASD Conduct Rule 2310, NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, or for improper sharing in customer accounts, in violation of NASD Conduct Rule 2330(f) and FINRA Conduct Rule 2010.

Appearances

John H. Han, Esq., appeared on behalf of the Department of Enforcement.

No appearance by or on behalf of Matthew M. Dooley.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on June 15, 2011. The Complaint charges Respondent Matthew M. Dooley (“Respondent”) with three causes of action. The first cause alleges that Respondent made unsuitable recommendations in violation of NASD

¹ This Amended Default Decision is issued to correct the summary references to NASD Conduct Rule 2330(f).

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second cause alleges that Respondent improperly shared in customer accounts in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010. The third cause alleges that Respondent failed to provide information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.²

II. Procedural History

On June 15, 2011, Enforcement served the Complaint and First Notice of Complaint on Respondent by mailing them to him at his most recent residential address recorded in the Central Registration Depository ("CRD") by first-class and certified mail, return receipt requested.³ The certified mailing was returned with the signature of "Debra Dooley."⁴ The first-class mailing was not returned.⁵ Respondent did not answer or otherwise respond to the Complaint.⁶

On July 15, 2011, Enforcement served the Complaint and Second Notice of Complaint on Respondent by mailing them to him at his CRD address by first-class and certified mail, return receipt requested.⁷ The certified mailing was returned signed by "D.

² NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 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. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the Rules that were in effect at the time of Respondent's alleged misconduct. In addition, because Enforcement filed the Complaint after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

³ Han Decl. ¶ 9; CX-3.

⁴ Han Decl. ¶ 11; CX-4.

⁵ Han Decl. ¶ 10.

⁶ Han Decl. ¶ 12.

⁷ Han Decl. ¶ 13.

Dooley.”⁸ The first-class mailing was not returned.⁹ Respondent did not answer or otherwise respond to the Complaint.¹⁰

On September 9, 2011, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the declaration of John H. Han, Esq. (“Han Decl.”) and five exhibits.¹¹

Respondent did not respond to Enforcement’s Default Motion. Accordingly, pursuant to Rules 9215(f) and 9269(a), the Hearing Officer granted Enforcement’s Default Motion and deemed the allegations in the attached Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered as a General Securities Representative with Internet Securities (the “Firm”) between May 2007 and November 2009.¹² He has not been registered with FINRA since he left the Firm.¹³

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 FINRA terminated Respondent’s registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and

⁸ Han Decl. ¶ 15; CX-5.

⁹ Han Decl. ¶ 14.

¹⁰ Han Decl. ¶ 16.

¹¹ Enforcement’s exhibits are labeled CX-1 through CX-5.

¹² Han Decl. ¶¶ 6-7; CX-2.

¹³ Han Decl. ¶ 7; CX-2.

with failing to provide information during the two-year period following the termination of his FINRA registration.¹⁴

B. First Cause of Action – Suitability

Under NASD Conduct Rule 2310, a registered representative must have reasonable grounds for believing that his or her recommendations to a customer to purchase or sell securities is suitable based upon facts, if any, disclosed by such customer as to his or her other security holdings, financial situation and needs.

Here, Respondent recommended that customers CV and CR purchase approximately 15 different exchange-traded funds that were designed to correspond to a multiple of the inverse of the daily price performance of an underlying index (the “ETFs”). The prospectuses for the ETFs stated that they employ leveraging, which is considered a speculative technique, and that they were not designed to be held for more than a day. Thus, the ETFs were speculative instruments, designed for intra-day trading, not long term investment.

CV’s investment experience consisted of four transactions per year in stocks and mutual funds over the course of 10 years. CV’s investment objectives were “growth” and “income.” Other investment objectives on the account application that CV did not select were “speculation” and “day trade.” Nonetheless, between December 2007 and December 2008, Respondent recommended and effected approximately 36 purchases and 36 sales of the ETFs. Most of these positions were held more than a day. Several were held for months. CV lost approximately \$26,543 on these transactions, which constituted approximately 39% of the original amount deposited in the account.

¹⁴ 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”).

CR's investment experience consisted of two transactions per year in stocks and mutual funds over the course of approximately 25 years. Like CV, CR's investment objectives were "growth" and "income." Other investment objectives on the account application that CR did not select were "speculation" and "day trade." Nonetheless, between March and December 2008, Respondent recommended and effected approximately 26 purchases and 23 sales of the ETFs. CR lost approximately \$18,764, which constituted approximately 43% of the original amount deposited in the account.

Respondent was paid a commission on approximately 114 of the 121 transactions at issue in the CV and CR accounts. Respondent recommended these transactions despite the fact that he knew the customers' investment objectives were growth and income, not speculation and day trading. Further, the fact that he caused CV and CR to hold the ETFs in their accounts for longer than a day suggests that Respondent did not understand the purpose of the ETFs and the associated risks. Accordingly, his recommendation to purchase them could not have been based upon reasonable grounds.

By recommending the purchase and sale of the ETFs, Respondent violated NASD Conduct Rules 2310 and 2110 for transactions that occurred up until December 14, 2008, and NASD Conduct Rule 2310 and FINRA Rule 2010 for a transaction that occurred on December 15, 2008.

C. Second Cause – Improper Sharing in Accounts

NASD Conduct Rule 2330(f) prohibits associated persons from directly or indirectly sharing profits or losses in any customer account without prior written authorization by both the customer and the associated person's member firm. Further, such sharing is only permitted in direct proportion to the financial contributions made by the associated person.

In September 2008, CR contacted Respondent to complain about the losses associated with the ETF trading discussed above. CR subsequently told Respondent to invest in bonds. Instead of following this instruction, Respondent continued to purchase and sell the ETFs.

In December 2008, CR contacted the president of the Firm to complain about Respondent's failure to follow CR's instructions. The president contacted Respondent to investigate the complaint. In January 2008, Respondent contacted CR and gave her a handwritten note stating that he would pay her \$1,000 per month for 18 months. This amount approximated the \$18,764 loss that CR suffered in her account. Between January and April 2009, Respondent paid CR \$2,500. Respondent did not notify anyone at the Firm about these payments and did not obtain written authorization from CR to make these payments. Respondent did not transfer any funds into CR's account.

Accordingly, Respondent violated NASD Conduct Rule 2330(f) and FINRA Rule 2010.

D. Third Cause – Failure to Provide Information

The third cause of the Complaint alleges that Respondent failed to provide information requested by FINRA Staff ("Staff") pursuant to Rule 8210.

On April 30, 2010, Staff sent Respondent a written request, pursuant to Rule 8210, requesting that Respondent explain his trading strategies in CV's and CR's accounts and requesting documents pertaining to his payments to CR. Staff sent the request via first-class and certified mail to Respondent's CRD address.¹⁵ The certified

¹⁵ Han Decl. ¶ 38; CX-4.

letter was returned as unclaimed and undeliverable, and the first-class mailing was not returned.¹⁶ Respondent failed to respond to the request.¹⁷

On May 14, 2010, Staff sent Respondent a second request for information and documents pursuant to Rule 8210.¹⁸ Staff sent the request via first-class and certified mail to Respondent's CRD address.¹⁹ The certified letter was returned signed "Alma Calderon."²⁰ The first class letter was not returned.²¹ Respondent did not respond to the request for information.²²

The facts alleged in the Complaint establish that Respondent violated FINRA Rules 8210 and 2010 by failing to respond to Staff's request for information and documents.

IV. Sanctions

A. Failure to Respond

The FINRA Sanction Guidelines ("Sanction Guidelines") for failing to respond to FINRA Rule 8210 requests for information provide that a bar should be "standard" when there is a complete failure to respond.²³ There are no mitigating factors warranting a lower sanction. Accordingly, the appropriate sanction is a bar.

¹⁶ Han Decl. ¶¶ 39-40.

¹⁷ Han Decl. ¶ 41.

¹⁸ Han Decl. ¶ 42; CX-5.

¹⁹ Han Decl. ¶ 43; CX-5.

²⁰ Han Decl. ¶ 45.

²¹ Han Decl. ¶ 44.

²² Han Decl. ¶ 46.

²³ FINRA Sanction Guidelines 33 (2011), www.finra.org/sanctionguidelines.

B. Suitability

The Sanction Guidelines for recommending unsuitable investments suggest a fine of \$2,500 to \$75,000, a suspension for ten business days to one year, and in egregious cases, a suspension of up to two years or a bar.²⁴

This is not an egregious case. As Enforcement notes, there is no evidence that Respondent's unsuitable recommendations were the result of intentional misconduct. Instead, Respondent appears to have negligently failed to adequately research and understand the securities at issue. However, this is a serious case, warranting sanctions in excess of the minimums recommended in the Sanction Guidelines. Respondent's misconduct spanned nearly a year, involved two customer accounts, and resulted in harm to customers. Accordingly, the Hearing Officer agrees with Enforcement's position that a 90-day suspension in all capacities and a fine of \$10,000 would be warranted. However, in light of the bar for failing to respond, no additional sanction is imposed for this violation.

C. Improper Sharing in Accounts

There are no Sanction Guidelines for improper sharing in accounts. However, the Sanction Guidelines for settling away, which are somewhat analogous, recommend a fine of \$2,500 to \$50,000 and consideration of a suspension in all capacities for up to two years, or in egregious cases, a longer suspension or a bar.²⁵

This is not an egregious case. As Enforcement observes, there is no evidence to indicate that Respondent promised to share in CR's losses in order to induce any transactions or on the condition that CR withdraw her complaint. Therefore,

²⁴ Sanction Guidelines at 96.

²⁵ Sanction Guidelines at 88.

Enforcement's request for a 10 business-day suspension in all capacities and a \$5,000 fine seems reasonable. However, in light of the bar for failing to respond, no additional sanction is imposed for this violation.

V. Conclusion

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to provide information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, no additional sanctions were imposed for making unsuitable recommendations, in violation of NASD Conduct Rule 2310, NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, or for improper sharing in customer accounts, in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010.²⁶ The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Sara Nelson Bloom
Hearing Officer

Copies to: Matthew M. Dooley (*via first-class mail and overnight courier*)
John S. Han, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

²⁶ Enforcement did not seek restitution because the customers have been compensated for their losses.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Matthew M. Dooley (CRD No. 2507851),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090209303-01

COMPLAINT

Complainant alleges:

SUMMARY

1. Respondent Matthew M. Dooley made numerous unsuitable recommendations of inverse, leveraged exchange traded funds (ETFs) to two customers over the course of approximately one year. He also improperly shared in one customer's losses. Finally, Respondent failed to provide information requested by FINRA staff in connection with an investigation. As a result, Respondent violated NASD Conduct Rules 2310, 2330 and 2110 and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in September 2005 when he became associated with a FINRA member as a back-office employee. He passed the Series 7 and 66 examinations in November 2005.
3. From on or about March 2, 2007 through November 19, 2009, Respondent was registered at FINRA member Internet Securities (the Firm) as a General Securities Representative. He has not since become associated with any other FINRA member.

4. Although Respondent has not been associated with a FINRA member firm since November 19, 2009, Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because:
 - a. the Complaint was filed within two years after the date upon which Respondent ceased to be associated with a FINRA member; and
 - b. the Complaint charges Respondent with misconduct committed while Respondent was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which Respondent ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
Suitability (NASD Conduct Rules 2310 and 2110 and FINRA Rule 2010)

5. Complainant realleges and incorporates by reference paragraphs 1 through 4 above.

Background

6. The securities at issue in this case consist of approximately 15 different exchange-traded funds (ETFs). Each of these ETFs was designed to correspond to a multiple of the inverse of the daily price performance of an underlying index.
7. The prospectuses pertaining to these ETFs explicitly state that they employ leveraging, which is considered a "speculative" technique.
8. The prospectuses further explicitly state that the ETFs should not be expected to achieve their stated objectives when held for longer than one day.

Customer CV

9. On or about November 21, 2007, Customer CV signed an account application in order to open an account with Respondent at the Firm. According to the application, CV's investment experience consisted of approximately 4 transactions per year in stocks and mutual funds over the course of approximately 10 years. CV's chosen investment objectives were "Growth" and "Income." Other investment objectives on the account application *not* selected by CV were "Speculation" and "Day Trade."
10. From on or about December 24, 2007 through December 15, 2008, Respondent recommended and effected approximately 36 purchases and 36 sales of the ETFs described in paragraphs 6 through 8.
11. The vast majority of these transactions involved holding periods of longer than one day. Several ETFs were held for months in CV's account.

Customer CR

12. On or about December 3, 2007, Customer CR signed an account application in order to open an account with Respondent at the Firm. According to the application, CR's investment experience consisted of approximately 2 transactions per year in stocks and mutual funds over the course of approximately 25 years. CR's chosen investment objectives were "Growth" and "Income." Other investment objectives on the account application *not* selected by CR were "Speculation" and "Day Trade."
13. From on or about March 13, 2008 through December 12, 2008, Respondent recommended and effected approximately 26 purchases and 23 sales of the ETFs described in paragraphs 6 through 8.

14. The vast majority of these transactions involved holding periods of longer than one day. Several ETFs were held for months in CR's account.
15. CV's and CR's investment objectives were inconsistent with the purchased ETFs which, as described by their prospectuses, employed speculative techniques and were designed to be trading instruments (*i.e.*, held for no more than one day) rather than securities designed for growth or income.
16. Further, the fact that Respondent repeatedly caused CV and CR to hold the ETFs for longer than one day demonstrates his fundamental misunderstanding of these securities, such that any recommendation he made pertaining to them could not have been based on reasonable grounds.
17. Based on the foregoing, Respondent did not have reasonable grounds for believing that his recommendations to purchase and sell the above-described ETFs were suitable for CV and CR. With respect to the recommendations that occurred between on or about December 3, 2007 and December 14, 2008, Respondent violated NASD Conduct Rules 2310 and 2110. With respect to a recommendation that occurred on or about December 15, 2008, Respondent violated NASD Conduct Rule 2310 and FINRA Rule 2010.
18. As a result of Respondent's unsuitable recommendations, CV experienced market losses of approximately \$26,543 over the relevant time period.
19. As a result of Respondent's unsuitable recommendations, CR experienced market losses of approximately \$18,764 over the relevant time period.

SECOND CAUSE OF ACTION

Improper Sharing in Accounts (NASD Conduct Rule 2330 and FINRA Rule 2010)

20. Complainant realleges and incorporates by reference paragraphs 1 through 19 above.
21. In September 2008, CR contacted Respondent to complain about the losses she suffered from Respondent's ETF trades. CR subsequently told Respondent to invest her money in certain bonds.
22. Respondent did not honor CR's request but, instead, continued to purchase and sell the above-described ETFs.
23. In December 2008, CR contacted the president of the Firm to complain about Respondent's failure to honor her instructions. The president of the Firm immediately contacted Respondent to obtain additional information about the circumstances surrounding CR's complaint.
24. In January 2009, Respondent contacted CR. At that time, he gave her a handwritten note stating that he would pay her \$1,000 per month for eighteen months.
25. Between January and April 2009, Respondent made four payments to CR totaling \$2,500. Respondent never notified anyone at the Firm about these payments and did not obtain written authorization from CR to make these payments.
26. At no time did Respondent ever contribute any funds to CR's account.
27. By sharing in CR's losses without obtaining appropriate prior written authorization from CR and the Firm and, further, without having contributed any funds to CR's account, Respondent violated NASD Conduct Rule 2330 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

Failure to Provide Information (FINRA Rules 8210 and 2010)

28. Complainant realleges and incorporates by reference paragraphs 1 through 27 above.

The First Request

29. On or about April 30, 2010, FINRA staff sent Respondent a letter (First Request), pursuant to FINRA Rule 8210. Among other things, the First Request asked for an explanation of Respondent's trading strategies in CV's and CR's accounts, and also requested documents pertaining to his payments to CR.
30. The First Request was sent by first class mail and first class certified mail to Respondent's current residential address as reflected in CRD: [REDACTED] (CRD Address).
31. With respect to the mailings of the First Request:
- a. the first class mailing was not returned; and
 - b. the first class certified mailing was returned, marked, "UNCLAIMED; UNABLE TO FORWARD."
32. The due date for the First Request was May 14, 2010 but Respondent failed to provide any of the requested information.

The Second Request

33. On or about May 14, 2010, FINRA staff sent Respondent a second letter (Second Request), pursuant to FINRA Rule 8210, re-requesting the information and documents sought in the First Request.
34. The Second Request was sent by first class mail and first class certified mail to the CRD address.
35. With respect to the mailings of the Second Request:
- a. the first class mailing was not returned; and

b. FINRA staff received a return receipt evidencing delivery of the certified mailing, signed by "Alma Calderon."

36. The due date for the Second Request was May 31, 2010 but Respondent failed to provide any of the requested information.

37. By failing to provide information requested by FINRA staff in connection with an investigation, Respondent violated FINRA Rules 8210 and 2010.

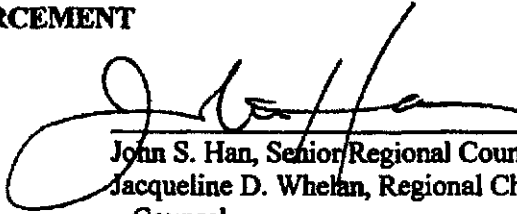
RELIEF REQUESTED

WHEREFORE, Complainant 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: June 15, 2011



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