

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TAM THANH TRAN
(CRD No. 4703139),

Respondent.

Disciplinary Proceeding
No. 2010021580201

Hearing Officer – AWL

DEFAULT DECISION

September 25, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010. In light of the bar, no additional sanctions are imposed for Respondent sending misleading correspondence and causing inaccurate books and records of a member firm, in violation of NASD Rule 3110 and FINRA Rule 2010.

Appearances

Jennifer J. Schulp, Esq. and Paul M. Schindler, Esq., for the Department of Enforcement, Complainant

No appearance by or on behalf of Tam Thanh Tran, Respondent

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) filed a Complaint with the Office of Hearing Officers on April 26, 2012, charging Respondent Tam Thanh Tran (“Respondent”) with: (1) sending misleading correspondence to a customer, in violation of FINRA Rule 2010, and thereby causing the books and records of a member firm to be inaccurate, in violation of NASD Rule 3110 and FINRA Rule 2010; and (2) failure to

respond to FINRA staff's requests to appear and provide information, in violation of FINRA Rules 8210 and 2010.¹

Respondent failed to answer the Complaint. Accordingly, the Hearing Officer finds Respondent in default and grants Enforcement's Motion for Entry of Default Decision.²

II. PROCEDURAL HISTORY AND RESPONDENT'S DEFAULT

On April 26, 2012, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail, return receipt requested, at Respondent's last known CRD address.³ After Respondent failed to answer or respond,⁴ Enforcement served Respondent with the Complaint and Second Notice of Complaint on May 31, 2012, by certified mail, return receipt requested, again at his CRD address.⁵ Respondent again failed to answer or respond.⁶

¹ Following consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA developed a new "Consolidated Rulebook" of FINRA Rules. The first phase of the consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Since the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue.

² Enforcement filed a declaration signed by Jennifer J. Schulp ("Decl.") and five exhibits in support of the Default Motion. Enforcement's exhibits are labeled CX-1 through CX-5.

³ Decl. ¶ 21; CX-4. Enforcement also sent the Complaint and Notice of Complaint by first-class and certified mail to Respondent at a Cantonsville, MD address, which Respondent used in his last communications with Enforcement in March 2012.

⁴ Decl. ¶ 25.

⁵ Decl. ¶ 26; CX-5. Enforcement sent the Complaint and Notice of Complaint to Respondent's Cantonsville, MD address in addition to his CRD address.

⁶ Decl. ¶ 30.

The Hearing Officer finds that Respondent received valid constructive notice of this proceeding and Respondent defaulted by failing to answer the Complaint.⁷ Based on Respondent's default, the Hearing Officer deems the factual allegations in the Complaint admitted and grants Enforcement's Motion for Entry of Default Decision.⁸

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent became registered under FINRA member Ameriprise Financial Services, Inc. ("AFS"), after submitting his Uniform Application for Securities Industry Registration or Transfer ("Form U4") in December 2003. Respondent maintained his registrations as a General Securities Representative (Series 7) and an Investment Advisor (Series 66) until AFS terminated him on February 1, 2010, and filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA on February 3, 2010.⁹ AFS amended the Form U5 on November 2, 2010, to incorporate a customer complaint.¹⁰

The Hearing Officer finds that jurisdiction exists in this proceeding pursuant to FINRA By-Laws Article V, Section 4(a)(i),¹¹ which provides that former members and associated persons remain subject to disciplinary actions by FINRA for two years after

⁷ See *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (NAC July 26, 2012) (constructive notice when mail complaint to respondent's CRD address).

⁸ See FINRA Rules 9215(f) and 9269(a). A copy of the Complaint is attached.

⁹ Decl. ¶¶ 5-8; CX-1 at 3 and CX-2.

¹⁰ Decl. ¶ 9; CX-3.

¹¹ FINRA By-Laws are available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

termination of registration and that an amendment to the notice of termination filing recommences the running of the two-year period if the complaint addresses conduct actionable under any statute, rule or regulation. Here, Enforcement timely filed the Complaint within two years of the amended U5 filing, alleging misconduct that occurred while Respondent was registered. Additionally, Respondent failed to appear and provide information pursuant to multiple written requests issued by Enforcement during the two-year period of retained jurisdiction.

B. Misleading Correspondence and Causing Inaccurate Books and Records

Between October 27 and December 3, 2009, Respondent made four transfers of funds, totaling \$18000, from the brokerage account of his then 84 year-old client, MC, into Respondent's personal AFS brokerage account. In connection with the last three transfers, Respondent wrote letters to MC, dated November 6, November 21, and December 4, 2009, falsely documenting the purpose of the transfers as personal gifts. For example, in the letter dated November 21, 2009, Respondent falsely described the transfer on November 10, 2009, "as a personal gift of \$5,000 more as a continuation of the prior 2 gifts you have given me" and "in addition to my engagement present and my future wedding gifts, some of the money is for care of your dog, and to help out certain people when you are gone."¹²

Respondent submitted copies of the letters to AFS even though he knew that the letters mischaracterized the transactions. In 2010 and 2011, Respondent provided AFS and Enforcement with information and on-the-record testimony that contradicted the content of the letters and led to his termination and the filing of the Complaint.¹³ Both the

¹² Compl. ¶ 24.

¹³ Decl. ¶ 16.

Form U5 and amended Form U5 filed by AFS stated that AFS terminated Respondent's employment "for violations of company policy related to acceptance of money from a client characterized by the client and the advisor as a gift resulting in advisor's failure to disclose outside business activity."¹⁴

The allegations in the Complaint establish that Respondent violated FINRA Conduct Rule 2010¹⁵ by sending misleading correspondence to his customer MC. The purpose of FINRA Rule 2010 is to protect against unethical behavior and "[i]t is well settled that [FINRA's] disciplinary authority under Rule [2010] is broad enough to cover a wide range of unethical conduct."¹⁶ The allegations in the Complaint further establish that Respondent violated NASD Rule 3110 and FINRA Rule 2010 by causing the books and records of his firm to be inaccurate. NASD Rule 3110 requires member firms to keep accurate books and records. Respondent's actions violated NASD Rule 3110 and FINRA Rule 2010 by inserting false information into the books and records of member firm AFS.¹⁷

C. Failure to Provide Information

FINRA Rule 8210 authorizes FINRA staff to require members and persons subject to its jurisdiction to "to provide information orally, in writing, or electronically ...

¹⁴ CX-2 at 2, CX-3 at 2.

¹⁵ FINRA Conduct Rule 2010 applies to Respondent through Rule 0140, which requires persons associated with a FINRA member to have the same duties and obligations as the member.

¹⁶ *Dep't of Enforcement v. Taylor*, No. C8050027, 2007 NASD Discip. LEXIS 11, at *22-23 (NAC Feb. 27, 2007) (falsifying documents violates Rule 2010). See also, *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (Rule 2110 prohibits conduct that does not directly involve securities or the violation of a specific securities law).

¹⁷ Compl. ¶¶ 31-33; Decl. ¶¶ 15-16.

with respect to any matter involved in [an] investigation, complaint, examination, or proceeding” authorized by the FINRA By-Laws or rules.¹⁸

FINRA began its investigation after receiving the initial Form U5 from AFS in February 2010. In April 2010, Respondent provided a written response to FINRA’s first request for information about his activity, and in September 2011, appeared for on-the-record testimony. However, Respondent thereafter failed to respond to four additional requests sent by FINRA staff pursuant to FINRA Rule 8210 in January, February and March 2012.¹⁹ Respondent instead advised Enforcement by letter dated March 20, 2012, that he would not comply further with any FINRA request.²⁰ To date, Respondent has not provided the documents and information requested by Enforcement, which in turn has impeded Enforcement’s assessment of additional misconduct.²¹

The Hearing Officer finds that Enforcement requested that Respondent appear and provide information, pursuant to FINRA Rule 8210(d), and that Respondent repeatedly failed to do so in violation of FINRA Rules 8210 and 2010.

IV. SANCTIONS

The FINRA Sanction Guidelines (“Guidelines”) govern the violations charged in this matter and set forth the circumstances and mitigating factors to consider when determining what sanctions to impose.²² Generally, the Guidelines seek to remedy

¹⁸ Rule 8210(a).

¹⁹ Compl. ¶¶ 39-54 (mailing all the requests by certified mail, return receipt requested to Respondent’s CRD address and to an additional address that Respondent previously provided to Enforcement as Respondent’s actual address). See also Decl. ¶ 18.

²⁰ Compl. ¶ 54; Decl. ¶ 18.

²¹ Decl. ¶ 20.

²² See <http://www.finra.org/Industry/Enforcement/SanctionGuidelines> (2011).

wrongs, deter future misconduct by the Respondent or others, and protect the investing public.²³ Many factors can affect the weight or level of sanctions issued, increasing or mitigating the sanctions when serious or egregious conduct occurs. Such factors include whether a respondent's actions were intentional, in good faith or negligent; the number of actions at issue; whether attempts to conceal or voluntarily correct the misconduct occurred; and the amount of assistance provided including the accuracy of assistance when FINRA investigated the misconduct.²⁴

A. Misleading Correspondence and Causing Inaccurate Books and Records

Respondent attempted to cloak his activity and money received from MC as permissible under AFS' policies by creating the misleading correspondence, which in turn created the inaccurate books and records. Arguably, multiple sanction guidelines may apply to Respondent's conduct,²⁵ given the rule violations cited in this cause of action. In assessing the severity of Respondent's actions, the Hearing Officer notes the intentional and repetitive nature of Respondent's acts and the use of the inaccurate information to mislead the Respondent's firm.²⁶

Accordingly, the Hearing Officer finds Respondent's misconduct to be serious with no evidence of any mitigating factors and Enforcement's request for a 90-day

²³ Guidelines 2.

²⁴ *Id.*, 6-7.

²⁵ Enforcement argues for the application of: 1) a record keeping violation; 2) falsification of documents; and 3) providing misleading information to a customer. *Dep't. of Enforcement's Motion for Entry of Default Decision* 3-4. Enforcement does not seek restitution as an appropriate remedy since Respondent's customer, MC, allegedly authorized the transfers. *Id.*, 4, n.8.

²⁶ No evidence is before the Hearing Officer that MC, Respondent's customer, was also misled.

suspension and \$10,000 fine to be within the range of appropriate sanctions. However, in light of the bar imposed under the second cause of action, no additional sanctions are imposed at this time.

B. Failure to Provide Information

The Guidelines provide that a bar should be “standard” when there is a complete failure to respond regarding FINRA’s Rule 8210 procedure for requesting information.²⁷ In addition, the Guidelines instruct adjudicators to consider the importance of the information requested as viewed from FINRA’s perspective. Even where a partial but incomplete response exists as in this case, a bar is still standard where a respondent cannot demonstrate that the information provided substantially complied with all aspects of the request.²⁸

Respondent failed to fully cooperate with FINRA staff on numerous occasions to provide important information in order to determine the nature and extent of his misconduct. Not only did Respondent fail to provide the requested information, he affirmatively stated that he would not comply further with any FINRA requests. His failure to cooperate effectively thwarted FINRA’s ability to substantiate Respondent’s claims of using the money for the benefit MC’s family or investigate other potential misconduct.

Barring Respondent from associating with any FINRA member firm in all capacities remedies the risk that Enforcement will not be able to obtain future

²⁷ Guidelines 33.

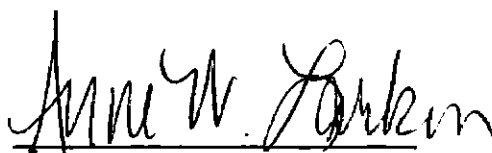
²⁸ *Id.*; see also *Dep’t of Enforcement v. Becerrill*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, *25 (OHO Feb. 23, 2012) (bar for partial, incomplete response that did not substantially comply with request).

information necessary to protect investors and serves to deter others from failing to appear and provide Enforcement with the information requested. A bar is an appropriate remedial sanction given all of the facts and circumstances of this matter and the lack of mitigating factors that may warrant a lesser sanction.

Accordingly, the Hearing Officer bars Respondent from associating with any FINRA member firm in all capacities for his refusal to respond and appear to provide the information as requested, in violation of FINRA Rules 8210 and 2010.

V. ORDER

Respondent Tam Thanh Tran is barred from associating with any member firm in any capacity for failing to provide information in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of this bar, no further sanctions are imposed for Respondent misconduct related to the misleading correspondence and causing inaccurate books and records in violation of NASD Rule 3110 and FINRA Rule 2010. The bar shall become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.


Anne W. Larkin
Hearing Officer

Copies to:

Tam Thanh Tran (via overnight courier and first-class mail)
Jennifer J. Schulp, Esq. (via electronic and first-class mail)
Paul M. Schindler, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Tam Thanh Tran (CRD No. 4703139),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010021580201

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In late 2009, Respondent Tam Thanh Tran ("Tran" or "Respondent") accepted \$18,000 from an 84-year old customer, MC. The money was transferred by MC from her brokerage account to Tran's brokerage account on four separate dates in October, November and December, 2009.

2. Aware that his firm, Ameriprise Financial Services, Inc. ("AFS" or "the Firm"), generally prohibited receipt of gifts in excess of \$250 from customers, Tran drafted and sent four letters to the customer and placed (or caused to be placed) in the Firm's files a copy of the letter for each of the transfers.

3. He did this in part to document that he fell within an exception to AFS's gift policy that permitted gifts of a personal nature from family or friends for special occasions or circumstances.

4. Three of the letters inaccurately described the money Tran received as personal gifts to Tran. The letters variously stated that (i) MC intended to gift Tran a total of \$25,000 by year end, (ii) some of the money represented a wedding or engagement present for Tran, (iii) some of money was for the care of MC's dog, and (iv) some of the money was to be used for other unspecified personal reasons.

5. However, three of the transfers, totaling \$13,000, were not gifts to Tran, but were for the benefit and use of one of MC's relatives. By falsely describing these transfers, Tran acted unethically and also caused his firm to have misleading books and records, thereby violating both FINRA Rule 2010 and NASD Rule 3110.

6. After investigating the matter, AFS terminated Tran for violating company policy.

7. Although Tran initially cooperated with FINRA's investigation, he failed to timely and completely respond to four FINRA Rule 8210 Requests issued on January 9, 2012, January 27, 2012, February 14, 2012, and March 13, 2012, as described more fully below, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

8. Tran first entered the securities industry in August 2003.

9. From August 2003 to February 2010, he was associated with AFS in Columbia, Maryland.

10. While at AFS, he maintained the following registrations:

- a. General Securities Representative (Series 7); and,
- b. Investment Advisor (Series 66).

11. Tran was terminated from AFS on February 1, 2010 as reflected in a Form U5 filed on February 3, 2010.

12. 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 of the filing of an amended U5 on November 2, 2010; and, (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member and also with failing to respond to FINRA staff's Rule 8210 Requests during a period when he was subject to FINRA's jurisdiction.

FACTS

13. MC was one of Tran's brokerage customers.

14. At the time of the events described herein, MC was 84 years of age.

15. In addition to being her broker, Tran was friends with MC and her family.

16. Tran received \$18,000 from MC, as follows:

- a. \$5,000 on or about October 27, 2009;
- b. \$4,000 on or about November 5, 2009;
- c. \$5,000 on or about November 10, 2009; and
- d. \$4,000 on or about December 3, 2009.

17. The money was transferred from MC's AFS brokerage account to Tran's AFS brokerage account.

18. After each transfer, Respondent wrote a letter to MC which characterized the payment as a personal gift and, in some instances, provided an explanation of the intended use of the money.

19. Tran sent or caused to be sent each such letter to MC and placed or caused to be placed each such letter in the Firm's files.

20. At the time Tran sent the last three letters to MC he knew that the explanations provided therein were misleading and inaccurate. The letters are described below.

November 6, 2009 Letter

21. On November 5, 2009, MC transferred \$4,000 to Tran.

22. In a letter dated November 6, 2009, Tran falsely described the funds as a "personal gift you have given me" and part of a series of gifts which "will total \$25,000 according to your wishes. We will document those if/as they happen."

November 21, 2009 Letter

23. On November 10, 2009, MC transferred \$5,000 to Tran.

24. In a letter dated November 21, 2009, Tran falsely described it "as a personal gift of \$5,000 more as a continuation of the prior 2 gifts you have given me" and "in addition to my engagement present and my future wedding gifts, some of the money is for care of your dog, and to help out certain people when you are gone."

December 4, 2009 Letter

25. On December 3, 2009, MC transferred \$4,000 to Tran.

26. In a letter dated December 4, 2009, Tran falsely described the funds as "your most recent and fourth gift overall to me[,] "for care of your dog" and "as a gift for the dog's expenses."

27. Each letter was false. The funds were not a gift to Tran. Rather, the money was for the use and benefit of one of MC's relatives.

FIRST CAUSE OF ACTION
Misleading Correspondence & Inaccurate Books & Records
(FINRA Rule 2010 and NASD Rule 3110)

28. The Department realleges and incorporates by reference paragraphs 1 – 27 above.

29. FINRA Rule 2010 requires that members and associated persons “observe high standards of commercial honor and just and equitable principles of trade.”

30. Sending a letter to a customer that knowingly contains false statements violates FINRA Rule 2010.

31. In addition, entering, or causing the entry, of inaccurate information into a member firm’s books and records violates NASD Rule 3110’s requirement to keep accurate books and records, and also independently violates FINRA Rule 2010.

32. As alleged above, Tran knowingly sent three letters to MC that contained false statements describing the three transfers of money he received in November and December 2009.

33. As alleged above, Tran placed or caused to be placed these letters in the Firm’s files, causing AFS to have inaccurate books and records.

34. By reason of the foregoing, Tran violated FINRA Rule 2010 and NASD Rule 3110.

SECOND CAUSE OF ACTION
Providing An Untimely and Incomplete Response to FINRA Requests for Information
(FINRA Rules 8210 and 2010)

35. The Department realleges and incorporates by reference paragraphs 1 – 34 above.

36. FINRA Rule 8210 requires member firms and associated persons to respond accurately and truthfully to requests for information.

37. FINRA Rule 2010 requires member firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade.

38. Initially during the investigation, Tran was responsive to FINRA staff including by giving testimony.

39. On January 9, 2012, FINRA staff requested, pursuant to FINRA Rule 8210, further information from Tran concerning his use of MC's funds (the "First Request").

40. The First Request was sent by certified first class mail to a Columbia, Maryland address that Tran had previously provided the staff as his actual address (the "Columbia Address"). The certified return receipt was signed for by someone with the last name of "Tran" on January 10, 2012.

41. The First Request had a deadline of January 20, 2012. Tran failed to respond at all to the First Request, including by the January 20, 2012 deadline.

42. On January 27, 2012, FINRA staff sent, pursuant to FINRA Rule 8210, a second request to Tran in connection with the now overdue documents and information (the "Second Request") requesting that Tran provided the requested documents and information no later than February 3, 2012.

43. The Second Request was sent by certified first class mail to the Columbia Address. The certified return receipt was signed for by Tran on February 21, 2012.

44. Tran failed to respond at all to the Second Request, including by the February 3, 2012 deadline.

45. On February 14, 2012, FINRA staff sent, pursuant to FINRA Rule 8210, a third request to Tran (the "Third Request"). The Third Request attached copies of the First Request and Second Request.

46. The Third Request was sent to the Columbia Address as well as to Tran's CRD address (the "CRD Address").

47. The certified return receipt for the Columbia Address was signed for by someone with the last name of "Tran" on February 29, 2012.

48. The envelope addressed to the CRD Address was returned to FINRA marked "Return to Sender, Not Deliverable As Addressed, Unable to Forward."

49. Tran failed to respond at all to the Third Request.

50. FINRA staff sent a fourth and final request (the "Fourth Request"), on or about March 13, 2012 to the Columbia address and the CRD Address. The Fourth Request contained copies of the prior requests.

51. The Fourth Request had a deadline of March 23, 2012.

52. Tran sent a letter dated March 20, 2012 acknowledging receipt of the Fourth Request.

53. In his letter, Tran failed to provide any of the documents called for by each of the prior Requests or to seek additional time to do so. Rather, Tran stated in his letter that he would not be complying further with any FINRA requests.

54. To date, Tran has not provided any of the requested documents or information called for by the First, Second, Third, or Fourth Requests.

55. As a result of the foregoing, Tran violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

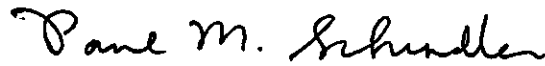
WHEREFORE, the Department respectfully requests that the Panel:

- 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: April 26, 2012



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