

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES STUART NESBIT
(CRD No. 1330746),

Respondent.

Disciplinary Proceeding
No. 2010021888201

Hearing Officer – LBB

DEFAULT DECISION

Dated: March 20, 2012

Respondent James Stuart Nesbit is barred for sharing commissions with an unregistered individual who had been barred by FINRA, in violation of NASD Rule 2420 and FINRA Rule 2010. Respondent is also barred for failure to provide information and failure to appear at an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Department of Enforcement, Thomas S. Kimbrell, Esq., Senior Counsel, Washington, D.C.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the Complaint in this disciplinary proceeding on December 12, 2011, asserting three causes of action against Respondent James Stuart Nesbit (“Nesbit” or “Respondent”). The First Cause of Action charges Respondent with a violation of NASD Rule 2420 and FINRA Rule 2010, by paying commissions derived from securities transactions to unregistered persons and entities. The Second Cause of Action charges Respondent with a violation of FINRA Rule 2010 by sharing commissions with a barred individual. The Third Cause of Action charges Respondent with a violation of FINRA Rules

8210 and 2010 by failing to respond to FINRA requests for information, and failure to appear for on-the-record testimony (“OTR”).

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. Enforcement filed a Motion for Entry of a Default Decision and Imposition of Sanctions on March 1, 2012, to which Respondent did not respond. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted and Enforcement’s motion is granted.¹

I. Respondent

Respondent was registered with various FINRA member firms from December 1, 1988, until April 28, 2010. From January 16, 2008, until April 28, 2010, he was registered with Capitol Securities Management, Inc. (“Capitol Securities”) as a general securities representative. Respondent is no longer associated with a FINRA member firm. Complaint ¶ 3; CX-1.

Respondent remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the Complaint was filed within two years after the termination of his registration with a member firm, and it charges him with misconduct while he was associated with a member firm, and with failure to respond to requests for documents, information, and testimony, pursuant to FINRA Rule 8210, within two years after the termination of his registration with a member firm.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which includes the Declaration of Thomas Kimbrell, signed by counsel for Enforcement, and supporting documentation that is attached to counsel’s declaration. Counsel’s declaration is cited herein as “Decl. ¶ __.” The supporting documentation is cited herein as “CX-__.”

II. Respondent's Default

On October 14, 2011, Respondent confirmed to Enforcement during a telephone call that he still resided at his address as listed in the Central Registration Depository ("CRD address"). Enforcement does not have actual knowledge that Respondent's CRD address is out of date, nor does Enforcement have actual knowledge of another address. Decl. ¶ 10.

On December 12, 2011, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail at his CRD address. In addition, Enforcement sent a copy of the Complaint and Notice of Complaint to Respondent's e-mail address. Decl. ¶ 6; CX-2. Enforcement received confirmation of delivery of the Complaint and Notice of Complaint to Respondent's CRD address. Decl. ¶ 7; CX-3. Respondent did not answer or otherwise respond to the Complaint.

On January 10, 2012, Enforcement served the Second Notice of Complaint, with a copy of the Complaint and Notice of Complaint, on Respondent by certified mail at his CRD address. Enforcement also sent a copy of the Second Notice of Complaint to Respondent's e-mail address. Decl. ¶ 8. The Second Notice of Complaint was returned to Enforcement marked "unclaimed." According to the Postal Service's website, the Postal Service attempted to deliver the certified mailing. Decl. ¶ 9; CX-4. Respondent has not answered or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

III. Violations

A. First Cause of Action: Violation of NASD Rule 2420 and FINRA Rule 2010 (Paying Commissions Derived from Securities Transactions to Unregistered Persons and Entities)

While registered with Capitol Securities, Nesbit worked in a service and sales support role for D.B., the general securities principal in charge of a branch of Capitol Securities in Virginia Beach, Virginia. In addition to being a branch manager for Capitol Securities, D.B. was the sole owner and member of Dominion Investment Group, LLC (“Dominion Investment”). Dominion Investment has never been a member of FINRA. Complaint ¶ 6. Effective February 5, 2010, FINRA permanently barred D.B. from associating with any FINRA member for misappropriating funds, providing false information to FINRA during on-the-record interviews, and creating inaccurate books and records. Complaint ¶ 7. After D.B. was barred by FINRA, some of D.B.’s customer accounts at Capitol Securities were reassigned to Nesbit. Complaint ¶ 8.

Between approximately February 26, 2010, and April 1, 2010, Capitol Securities paid Nesbit more than \$69,000 in commissions, fees, and overrides derived from securities transactions, including commissions on several variable annuity exchanges. The payments included commissions that Nesbit received from the sale of securities to D.B.’s former customers after D.B. was barred, and overrides that Nesbit received from sales of securities by other registered representatives in the Virginia Beach branch. Complaint ¶ 9. From approximately March 1 to April 1, 2010, Nesbit paid \$65,500 of the commissions and overrides that he received from Capitol Securities to D.B. Nesbit did so by transferring the commissions he received from Capitol Securities to the account of CFS Retirement Services, LLC (“CFS”), a company that he owned and controlled. Nesbit then wrote checks from CFS’s account payable to Dominion Investment, D.B.’s company. Complaint ¶ 10.

NASD Rule 2420(b)(1) provides that no member shall:

in any transaction with any non-member broker or dealer, allow or grant to such non-member broker or dealer any selling concession, discount or other allowance allowed by such member to a member of a registered securities association and not allowed to a member of the general public.

The Securities and Exchange Commission has held that the prohibition of Rule 2420(b)(1) is “directed to the member firm making improper payments and to the persons associated with that member who are responsible for making those payments.”² By directing commissions and overrides derived from securities transactions to a non-FINRA member that D.B. owned and controlled after D.B. was barred by FINRA, Nesbit violated NASD Rule 2420. By violating NASD Rule 2420, Nesbit also violated FINRA Rule 2010.³

B. Second Cause of Action: Violation of FINRA Rule 2010 (Engaging in Unethical Business Conduct (Sharing Commissions with a Barred Individual))

By directing commissions and overrides derived from securities transactions to an entity D.B. owned and controlled, Nesbit materially assisted D.B. in circumventing the bar imposed by FINRA. Complaint ¶ 13. FINRA Rule 2010 provides, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” By assisting D.B. in circumventing FINRA’s bar, Nesbit violated of FINRA Rule 2010.

² *Dep’t of Enforcement v. Walker*, No. C10970141, 2000 NASD Discip. LEXIS 2, at *25 (N.A.C. April 20, 2000), (citing *Lawrence W. Legel*, 51 S.E.C. 589, 591 (1993)); see also, *Membership Application of Firm A*, Application No. 20100226181, 2011 FINRA Discip. LEXIS 19, at *16 (N.A.C. Apr. 15, 2011).

³ A violation of a FINRA rule or regulation also constitutes a violation of Rule 2010. *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22-23 (July 20, 1999).

C. Third Cause of Action: Violation of FINRA Rules 8210 and 2010 (Failing to Respond to FINRA Requests for Information or Appear for On-The-Record Testimony)

By letters dated April 11, 2011, June 2, 2011, and June 21, 2011, Enforcement requested that Nesbit provide documents and information pursuant to FINRA Rule 8210. Two of the requests also directed Respondent to appear for OTRs. The April 11, 2011 letter requested that Nesbit appear for testimony on May 18, 2011. The June 2, 2011, letter requested that Nesbit appear for testimony on June 22, 2011. Complaint ¶ 17.⁴

Each of Enforcement's three Rule 8210 request letters was sent to Nesbit by certified mail at his CRD address. The June 2, 2011, letter also was sent to Nesbit by FedEx, and to an e-mail address that he provided to Enforcement. The June 21, 2011, letter also was sent to Nesbit's email address. Complaint ¶ 18. Nesbit signed a delivery receipt for the April 11, 2011, request letter sent by certified mail. On June 3, 2011, FedEx confirmed that the June 2, 2011, request had been delivered to Nesbit's CRD address. Complaint ¶ 19.

On June 20, 2011, Nesbit stated in an e-mail to Enforcement staff that he was "working on" his replies to the Rule 8210 requests. On June 21, 2011, Nesbit sent another e-mail that stated he would "get you as much of the information you requested by this Friday June 24." Complaint ¶ 20. In spite of Nesbit's assurances that he would provide Enforcement with the information requested pursuant to Rule 8210, Nesbit never provided any of the information requested in Enforcement's letters dated April 11, 2011, June 2, 2011, and June 21, 2011. Nesbit did not appear for testimony as requested pursuant to Rule 8210 in the April 11, 2011, and June 2, 2011, letters. Complaint ¶ 21.

As a result of the foregoing conduct, Nesbit violated FINRA Rules 8210 and 2010.

⁴ FINRA's investigation of Respondent's conduct originated from a regulatory tip. Motion for Entry of a Default Decision and Imposition of Sanctions, at 2.

IV. Sanctions

The First and Second Causes of Action are closely related, and a single, unified sanction is appropriate for both. FINRA's Sanction Guidelines do not include a specific guideline for sharing commissions with a disqualified person. As the most analogous guideline, Enforcement cites the guideline for "Disqualified Person Associating with Firm Prior to Approval; Firm Allowing Disqualified Person to Associate Prior to Approval."⁵ The guideline for that violation is a fine of \$5,000 to \$50,000. For egregious cases, the guideline instructs adjudicators to consider "suspending supervisory principal in any or all capacities for up to two years or barring supervisory principal, particularly where he or she knowingly allowed a disqualified person to become associated." Respondent's violations were egregious. Respondent inherited D.B.'s clients, and shared his commissions with D.B. in a multi-step process, knowingly assisting D.B. to evade FINRA's bar. In addition, one of the principal considerations is whether disqualification resulted from financial and/or securities misconduct. Here, the disqualification of D.B. was a bar from the securities industry for serious financial misconduct – misappropriating funds. A bar is the appropriate sanction.

A bar is the standard sanction for failure to respond to a request for information.⁶ A bar also will be imposed for Respondent's failure to respond to three requests for documents and information, two of which also requested testimony at an OTR.

V. Conclusion

Respondent James Stuart Nesbit is barred for sharing commissions with an unregistered individual who had been barred by FINRA, in violation of NASD Rule 2420 and FINRA Rule

⁵ FINRA Sanction Guidelines at 43 (2011).

⁶ Sanction Guidelines at 33.

2010. Respondent is also barred for failure to provide documents and information, and failure to appear at an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

The bars will be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: James Stuart Nesbit (*overnight courier and first-class*)
Thomas S. Kimbrell, Esq. (*via electronic and first-class mail*)
Christopher Perrin, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

James Stuart Nesbit (CRD No. 1330746),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010021888201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From approximately March 1, 2010 through April 1, 2010, Respondent James Stuart Nesbit paid \$65,500 in commissions derived from securities transactions to an individual, DB, who had been permanently barred by FINRA on February 5, 2010. By doing so, Nesbit violated NASD Rule 2420 and, as a result of that violation, FINRA Rule 2010. In addition, by assisting DB in circumventing the bar imposed by FINRA, Nesbit independently acted inconsistently with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

2. As part of its investigation, FINRA's Department of Enforcement issued three letters pursuant to FINRA Rule 8210 requesting that Nesbit provide documents and information and appear for testimony. Nesbit failed to provide the requested documents and information and failed to appear for testimony. By doing so, Nesbit violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. James Stuart Nesbit (CRD No. 1330746) was registered with various FINRA member firms from December 1, 1988, until April 28, 2010. From January 16, 2008, until April 28, 2010, Nesbit was registered with Capitol Securities Management, Inc. (Capitol Securities) as a general securities representative.

4. Although Nesbit is no longer associated with a FINRA member firm, 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 the Nesbit's registration with Capitol Securities, namely, April 28, 2010, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member, and with failing to respond to FINRA requests for information and to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION VIOLATION OF NASD RULE 2420 AND FINRA RULE 2010 (PAYING COMMISSIONS DERIVED FROM SECURITIES TRANSACTIONS TO UNREGISTERED PERSONS AND ENTITIES)

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

6. While registered with Capitol Securities, Nesbit worked in a service and sales support role for DB, the general securities principal in charge of a branch of Capitol Securities in Virginia Beach, Virginia. In addition to being a branch manager for Capitol Securities, DB was the sole owner and member of Dominion Investment Group, LLC (Dominion Investment). Dominion Investment has never been a member of FINRA.

7. Effective February 5, 2010, FINRA permanently barred DB from associating with any FINRA member for misappropriating funds, providing false information to FINRA during on-the-record interviews, and creating inaccurate books and records.

8. After DB was barred by FINRA, some of DB's customer accounts at Capitol Securities were reassigned to Nesbit.

9. Between approximately February 26, 2010 and April 1, 2010, Capitol Securities paid Nesbit more than \$69,000 in commissions, fees, and overrides derived from securities transactions, including commissions on several variable annuity exchanges. The payments included commissions that Nesbit received from the sale of securities to DB's former customers after DB was barred, and overrides that Nesbit received from sales of securities by other registered representatives in the Virginia Beach branch.

10. From approximately March 1, 2010 to April 1, 2010, Nesbit paid \$65,500 of the commissions and overrides that he received from Capitol Securities to DB. Nesbit did so by transferring the commissions he received from Capitol Securities to the account of CFS Retirement Services, LLC (CFS), a company that he owned and controlled. Nesbit then wrote checks from CFS's account payable to Dominion Investment, DB's company.

11. By directing commissions and overrides derived from securities transactions to a non-FINRA member that DB owned and controlled after DB was barred by FINRA, Nesbit violated NASD Rule 2420. By violating NASD Rule 2420, Nesbit also violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
VIOLATION OF FINRA RULE 2010
(ENGAGING IN UNETHICAL BUSINESS CONDUCT
SHARING COMMISSIONS WITH A BARRED INDIVIDUAL)**

12. Enforcement realleges and incorporates by reference paragraphs 1 through 11 above.

13. By directing commissions and overrides derived from securities transactions to an entity DB owned and controlled, Nesbit materially assisted DB in circumventing the bar imposed by FINRA.

14. The foregoing conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade.

15. As a result of the foregoing conduct, Nesbit violated of FINRA Rule 2010.

**THIRD CAUSE OF ACTION
VIOLATION OF FINRA RULES 8210 AND 2010
FAILING TO RESPOND TO FINRA REQUESTS FOR INFORMATION
OR APPEAR FOR ON-THE-RECORD TESTIMONY**

16. Enforcement realleges and incorporates by reference paragraphs 1 through 15 above.

17. By letters dated April 11, 2011, June 2, 2011, and June 21, 2011, FINRA's Department of Enforcement requested that Nesbit provide documents and information pursuant to FINRA Rule 8210. The April 11, 2011 letter requested pursuant to Rule 8210 that Nesbit appear for testimony on May 18, 2011. The June 2, 2011 letter also requested pursuant to Rule 8210 that Nesbit appear for testimony on June 22, 2011.

18. Each of Enforcement's three Rule 8210 request letters was sent to Nesbit by certified mail to his residential address as reflected in the Central Registration Depository ("CRD

address”), which Nesbit confirmed was still his current address during a telephone call with Enforcement staff on October 14, 2011. The June 2, 2011 letter also was sent to Nesbit via FedEx, and to an email address that he provided to Enforcement. And the June 21, 2011 letter—like the June 2 letter—also was sent to Nesbit’s email address.

19. Nesbit received Enforcement’s requests. Nesbit signed a delivery receipt for the April 11, 2011 request letter sent via certified mail. On June 3, 2011, FedEx confirmed that the June 2, 2011 request was delivered to Nesbit’s CRD address.

20. On June 20, 2011, Nesbit emailed Enforcement staff and stated that he was “working on” his replies to the Rule 8210 requests. On June 21, 2011, Nesbit emailed again and stated that he would “get you as much of the information you requested by this Friday June 24.”

21. In spite of Nesbit’s assurances that he would provide Enforcement with the information requested pursuant to Rule 8210, Nesbit never provided any of the information requested in Enforcement’s April 11, 2011, June 2, 2011, and June 21, 2011 letters. Nor did Nesbit ever appear for testimony as requested pursuant to Rule 8210 in the April 11, 2011 and June 2, 2011 letters.

22. As a result of the foregoing conduct, Nesbit violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, Enforcement 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 Nesbit 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: December 12, 2011



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