

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANNIE ORION KIM
(CRD No. 4821323),

Respondent.

Disciplinary Proceeding
No. 2010022697101

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

March 21, 2013

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to appear and testify at an on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2010. In addition, Respondent exercised discretion in a customer's account without written acceptance of the account as discretionary by her firm, in violation of NASD Conduct Rule 2510 and FINRA Rule 2010; however, no additional sanction is imposed for this violation in light of the bar imposed for her violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Kevin G. Kulling, Esq., and Mark A. Koerner, Esq., for the Department of Enforcement.

No appearance by or on behalf of Respondent Annie Orion Kim.

DECISION

Annie Orion Kim formerly was a registered securities representative with Wells Fargo Advisors LLC. Wells Fargo discharged Kim in April 2010 for violating its policies and procedures relating to discretionary trading in client accounts. Thereafter, FINRA staff began the investigation that led the Department of Enforcement to initiate this disciplinary proceeding. FINRA staff determined from its investigation that Kim effected 11 discretionary transactions in a customer's account, despite the fact that the account was not an approved discretionary

account. In the course of the investigation, FINRA staff twice requested Kim to appear for an on-the-record interview to answer questions about her discretionary trading. Kim did not comply with the requests.

Enforcement filed a Complaint with the Office of Hearing Officers on March 14, 2012, and the attached Amended Complaint on November 6, 2012. The Amended Complaint charges Kim with (1) exercising discretion in a customer's account at Wells Fargo without written authorization, in violation of NASD Conduct Rule 2510 and FINRA Conduct Rule 2010; and (2) failing to appear for an on-the-record interview, in violation of FINRA Rules 8210 and 2010. Kim did not answer or otherwise respond to the Complaint or the Amended Complaint.

On February 1, 2013, Enforcement filed a motion for entry of a default decision. The motion is supported by the declaration of Kevin Kulling, Esq., and six attached exhibits. For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars Kim from associating with any FINRA member firm in any capacity.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws¹ because (1) the Complaint was filed within two years after Kim's last registration with FINRA terminated,² and (2) the Complaint charges her with violating FINRA's conduct rules while she was associated with Wells Fargo and failing to respond to Rule 8210 requests for information that FINRA staff issued during the two-year period following the termination of her FINRA registration.

¹ 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").

² Kim's last FINRA registration terminated effective April 30, 2010. Ex. 3, at 2.

II. Enforcement's Motion For Entry Of A Default Decision Is Granted

Enforcement filed the attached Amended Complaint with the Office of Hearing Officers on November 6, 2012, and the same day served Kim with a copy of the Amended Complaint and Notice of Amended Complaint by first-class certified mail (return receipt requested) at her residential address recorded in the Central Registration Depository ("CRD").³ The certified mailing was returned to Enforcement.⁴ Kim did not answer the Amended Complaint by December 4, 2012, the deadline set in the Notice of Amended Complaint.⁵

On December 5, 2012, Enforcement served Kim with a copy of the Amended Complaint and Second Notice of Amended Complaint by first-class certified mail (return receipt requested) at her CRD address.⁶ The certified mailing was returned to Enforcement.⁷ The Second Notice of Amended Complaint required Kim to file an Answer with the Office of Hearing Officers on or before December 24.⁸ To date, Kim has not answered or otherwise responded to the Complaint.⁹

On February 1, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Kim did not respond to the motion.

The Hearing Officer concludes that Kim received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1), and she

³ Kulling Decl. ¶ 8; Ex. 4. Enforcement also sent the Amended Complaint and Notice to two other addresses Enforcement had obtained for Kim. Kulling Decl. ¶ 8.

⁴ Kulling Decl. ¶ 9.

⁵ *Id.* ¶ 10.

⁶ *Id.* Enforcement also sent the Complaint and Second Notice to the same two alternate addresses it had sent the original notice, as well as an additional forwarding address obtained from the United States Postal Service. *Id.* ¶ 11.

⁷ *Id.* ¶ 11.

⁸ *Id.* ¶ 12.

⁹ *Id.*

therefore defaulted by failing to answer the Amended Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.¹⁰

III. Findings Of Fact And Conclusions Of Law

A. Background

Kim entered the securities industry in 2004. She was associated with Wells Fargo from January 28, 2008, until April 2, 2010, at which time Wells Fargo discharged Kim for violating its policies and procedures relating to discretion in a client account.¹¹ Wells Fargo's written supervisory procedures prohibited discretionary trading in a customer account unless the firm specifically designated it a discretionary account.¹²

Kim was registered as a General Securities Representative while she was associated with Wells Fargo. Kim's registration terminated on April 30, 2010, when Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA on her behalf.¹³ Kim has not been associated with a FINRA member firm or registered with FINRA since April 30, 2010.

B. Use Of Discretion Without Written Authority

The First Cause of Action alleges that, between January 11 and January 26, 2010, Kim exercised discretion in customer DC's securities account without Wells Fargo's written acceptance of the account as discretionary.¹⁴ Kim effected not fewer than 11 discretionary transactions in DC's account.¹⁵

¹⁰ The Hearing Officer treated the allegations in the attached Amended Complaint as admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

¹¹ Ex. 3, at 2.

¹² Kulling Decl. ¶ 15.

¹³ *Id.* ¶ 5.

¹⁴ Compl. ¶ 5.

¹⁵ *Id.* ¶ 4.

The Hearing Officer finds the foregoing allegations sufficient to establish that Kim violated NASD Rule 2510, which prohibits a registered representative from exercising any discretionary power in a customer's account without prior written authorization from the customer and written acceptance from the member firm.¹⁶ Kim also thereby violated FINRA Rule 2010, which requires member firms and their associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.¹⁷

C. Failure To Appear For An On-The-Record Interview

The Second Cause of Action alleges that Enforcement sent Kim two requests that she appear at FINRA's Chicago office to answer Enforcement's questions about her trading in DC's securities account. Enforcement sent the requests to her CRD address by first-class certified mail on May 3, 2011, and June 10, 2011. Kim did not appear or otherwise respond to the requests.¹⁸

The facts alleged in the Amended Complaint establish that Kim violated FINRA Rules 8210 and 2010 by failing to appear and provide testimony regarding her trading in DC's account at Wells Fargo.

IV. Sanctions

The FINRA Sanction Guidelines ("Sanction Guidelines") provide that a bar should be "standard" where there is a complete failure to respond to a Rule 8210 request for information.¹⁹ In addition, the Sanction Guidelines instruct adjudicators to consider the importance of the information requested as viewed from FINRA's perspective when assessing sanctions.²⁰

¹⁶ Rule 2510(b). *See also*, e.g., *Paul F. Wickswat*, 50 S.E.C. 785 (1991).

¹⁷ *See*, e.g., *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19 n.22 (Jan. 14, 2005) (finding that, by violating NASD Rule 2510(b), respondent also violated NASD Rule 2110 (now FINRA Rule 2010)) (citation omitted).

¹⁸ Compl. ¶¶ 8-16.

¹⁹ FINRA Sanction Guidelines 33 (2011), www.finra.org/sanctionguidelines.

²⁰ *Id.*

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given the facts and circumstances of this case. The information Enforcement sought was important. Enforcement was investigating serious allegations of misconduct. In addition, there are no mitigating factors in the record that would warrant a lesser sanction. Accordingly, the Hearing Officer will bar Kim from associating with any FINRA member firm in all capacities for this violation.

The Sanction Guidelines for the exercise of discretion in violation of Rule 2510 recommend a fine of \$2,500 to \$10,000, which may be increased by the amount of the respondent's financial benefit.²¹ In egregious cases, the Sanction Guidelines further recommend consideration of a suspension in any or all capacities for 10 to 30 business days. In assessing the appropriate sanction, the Sanction Guidelines direct adjudicators to consider two specific factors. First, in cases where there is evidence that the customer granted discretionary authority to the respondent, adjudicators are directed to take into account whether the customer's grant of discretion was express or implied. Second, adjudicators are to consider whether the firm's policies or procedures prohibited discretionary trading and whether the firm prohibited the respondent from exercising discretion in customer accounts.

In this case, Enforcement's motion for entry of default decision references the fact that Kim's customer had granted her limited discretionary authority. The motion states that DC sent Kim an email in December 2009 authorizing Kim to make trades in his account when he was not available.²² Although there is no evidence in the record to support Enforcement's representations regarding DC's grant of limited discretionary authority to Kim, nonetheless the Hearing Officer took this mitigating factor into consideration in determining what the appropriate sanction would

²¹ Sanction Guidelines 85.

²² Mot. at 3.

be for this violation. The Hearing Officer also took into consideration the fact that Wells Fargo's policies prohibited discretionary accounts, and it had not approved DC's account for discretionary trading. Accordingly, the Hearing Officer concludes that the appropriate sanction for Kim's misconduct in exercising discretion in DC's account without her firm's approval would be a \$5,000 fine. However, no additional sanction is imposed for this violation because Kim is barred for her violation of Rules 8210 and 2010.²³

V. Order

Annie Orion Kim is barred from associating with any member firm in any capacity for failing to appear and testify at an on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding. In light of the bar, no additional sanction is imposed for her exercise of discretion in a customer's account without written acceptance of the account as discretionary by her firm, in violation of NASD Conduct Rule 2510 and FINRA Conduct Rule 2010.



Andrew H. Perkins
Hearing Officer

Copies to:

Annie Orion Kim (*via overnight courier and first-class mail*)
Kevin G. Kulling, Esq. (*via electronic and first-class mail*)
Mark A. Koerner, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
Susan M. Schroeder, Esq. (*via electronic mail*)

²³ See, e.g., *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Annie O. Kim
CRD No. 4821323,

Respondent.

DISCIPLINARY PROCEEDING
No. 2010022697101

AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In January 2010, Annie Kim exercised discretion in a customer's account without written acceptance of the account as discretionary by her employing FINRA member firm. Additionally, Kim failed to appear for an on-the-record interview.

RESPONDENT AND JURISDICTION

2. Annie Kim entered the securities industry in 2004 as a General Securities Representative of a member of FINRA. In 2008, she became registered with Wells Fargo Advisors LLC, where she remained until April 2, 2010. She is not currently registered with a FINRA member. Although Respondent is no longer registered or associated with a FINRA member, she 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 date upon which she ceased to be associated with a FINRA member, namely, April 2, 2010, and the Complaint charges her with misconduct committed while she was registered or associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which she ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
Exercising Discretion Without
Written Authorization
NASD Rule 2510 and FINRA Rule 2010

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. On or about January 11, 2010 through on or about January 26, 2010, Kim effected at least eleven transactions in the securities account of customer DC.
5. The transactions were effected at Kim's discretion, without written acceptance of the account as discretionary by Wells Fargo.
6. As a result of the foregoing conduct, Kim violated NASD Rule 2510 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
Failure to Appear for On the Record Testimony
FINRA Rules 8210 and 2010

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. On or about May 3, 2011, FINRA staff sent a request for Kim to appear for on the record testimony ("OTR") scheduled for May 19, 2011, at FINRA's Chicago office.

9. The Rule 8210 request was sent to Kim's CRD address as well as two additional addresses that FINRA staff discovered, by both regular and certified mail, return receipt requested.

10. The first class mailings were not returned and the certified mailing to Kim's CRD address was returned marked, "Unclaimed."

11. Kim did not appear for the May 19, 2011 OTR date and she did not contact FINRA staff to reschedule or to otherwise explain that she was not available.

12. Kim was sent a second request on June 10, 2011, pursuant to Rule 8210 to appear for an OTR scheduled for June 30, 2011.

13. The request was sent by first class mail and by certified mail, return receipt requested, to both her CRD address where the first request was mailed, as well as the two other addresses that staff obtained.

14. The first class mailings were not returned to staff and the certified mailing to her CRD address and one of the other addresses were returned marked "Unclaimed."

15. On June 30, 2011, the date of the OTR as stated in the Rule 8210 letter, Kim failed to appear at FINRA's Chicago office for the on the record interview.

16. Kim did not contact staff or provide staff with an explanation for her failure to appear and she did not request a rescheduled date for her testimony.

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

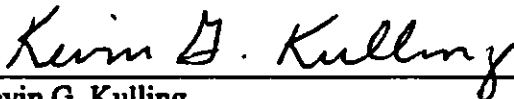
RELIEF REQUESTED

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;
- 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: November 6, 2012


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