

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Andrew J. Aragona (CRD No. 1320844),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010023963301

Hearing Officer - TBD

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Aragona recommended two variable annuity switches that were not suitable for an elderly customer because the purported benefits of the switches were significantly outweighed by the costs incurred by the customer, in violation of NASD Conduct Rules 2310 and 2110.

RESPONDENT AND JURISDICTION

2. Aragona entered the securities industry on September 9, 1985 when he became associated with a FINRA member. From July 10, 2007 until March 19, 2009, Aragona was associated with Newbridge Securities Corporation ("Newbridge"). Aragona has not been associated with a FINRA member firm since his association with Newbridge. While associated with Newbridge, Aragona held Series 7, 63 and 65 licenses.

3. On July 28, 2010, Newbridge amended Aragona's Form U5 to disclose customer EP's arbitration claim.
4. Although Aragona 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 filing of an amendment to his Form U5 disclosing customer EP's complaint, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

CAUSE OF ACTION

Unsuitable Variable Annuity Transactions Violation of NASD Conduct Rules 2310 and 2110

5. The Department realleges and incorporates by reference paragraphs one through four above.
6. Between September 2007 and September 2008, Aragona recommended two variable annuity switches to customer EP. At the time, customer EP was in her late seventies, had a stated risk tolerance of moderate, annual income of over \$100,000, liquid assets of over \$500,000 and a primary investment objective of capital appreciation.
7. Prior to his association with Newbridge, Aragona had sold EP four variable annuities.
8. Shortly after commencing his association at Newbridge, on September 6, 2007, Aragona recommended that EP consolidate all of her annuities into one Lincoln National ("Lincoln") annuity.

9. Aragona recommended the switch to the Lincoln annuity because it purportedly offered “revocable annuitization”¹ and because the Lincoln annuity permitted EP to leave money to her heirs in a tax efficient manner.
10. The Lincoln annuity was purchased for \$1,185,229 and EP incurred approximately \$69,000 in surrender fees in connection with the switch. Aragona received \$67,500 in commissions in connection with the transaction.
11. In August 2008, less than a year after purchasing the Lincoln annuity, Aragona recommended that EP switch the Lincoln annuity for a Nationwide Marketflex II (“Nationwide”) annuity.
12. Aragona recommended the switch because he believed the Nationwide annuity provided more flexibility than the Lincoln annuity in volatile market conditions and because the Nationwide annuity allowed investments in Rydex² subaccounts.
13. The Nationwide annuity, however, did not offer revocable annuitization, the very purpose for the initial switch that Aragona had recommended.
14. The Nationwide annuity was purchased for \$1,017,195 and EP incurred approximately \$61,000 in surrender fees in connection with the switch. Aragona received \$56,000 in commissions in connection with the transaction.
15. The benefits of revocable annuitization and the ability to invest in Rydex funds were outweighed by the significant costs to EP. Specifically, in less than one year, EP

¹ Revocable annuitization allows the annuitant to specify the payout terms and prevents the beneficiary from changing those terms after the annuitant dies.

² Rydex funds have no restrictions on the frequency of trading and no penalty charge for short holding periods.

incurred a total of approximately \$130,000 in surrender charges in connection with the two switches.

16. Because the costs associated with the two switches significantly outweighed any purported benefits, the two recommendations were not suitable for EP.

17. Based on the foregoing conduct, Aragona violated NASD Conduct Rules 2310 and 2110.

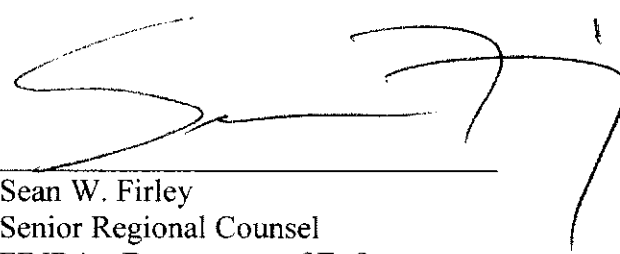
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that the Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: November 30, 2011



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