

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID HARARI (CRD No. 4094088),

and

██████████ (CRD No. ██████████)

Respondents.

DISCIPLINARY PROCEEDING
No. 2011025899601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In January 2012, David Harari (D. Harari) provided false information and documents to FINRA staff and his firm in connection with an investigation into his business dealings with a customer who was also a close friend of himself and his wife, ██████████. In response to a Rule 8210 request, he falsely told FINRA staff that he had repaid a loan from this customer, and supported that lie by inducing the customer to prepare and sign a letter containing false representations which he then sent to the staff and to his firm, knowing it to be untrue. He also testified falsely in November 2012 that he did not draft the letter.
2. In addition, in April 2008 and June 2010, D. Harari caused his customer to give him a total of \$15,000, purportedly as financial planning fees, although the customer was also paying the fees to D. Harari's firm, and again provided false information and documentation in

response to a FINRA request for information about those payments. In addition, D. Harari failed to disclose the existence of tax liens on his Form U4.

3. [REDACTED] who was D. Harari's assistant and an associated person with the firms at which D. Harari was registered, participated in preparing false documentation in support of the claimed loan repayment for submission to FINRA and the firm employing the Hararis.

4. By virtue of the foregoing, D. Harari violated FINRA Rules 1122, 2010, 2150, and 8210; Art. V, Sec. 2 of FINRA's By-Laws; and NASD Rules 2110 and 2330 and IM-1000-1. [REDACTED] violated FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

5. D. Harari was in the securities industry from December 1999 until January 31, 2013. He was employed by Ameriprise Financial Services, Inc. (and its predecessor, American Express Financial Advisors) from December 1999 until December 16, 2010, when he was allowed to resign while he was under investigation for alleged suitability violations. He joined Raymond James & Assoc., Inc. in December 2010, and was permitted to resign from that firm on January 17, 2012 because the firm "lost confidence" in his business practices. He was then registered with Girard Securities, Inc. from February 15, 2012 until January 31, 2013, at which time the firm permitted him to resign, citing its lack of resources necessary to supervise him.

6. Much of D. Harari's business at Ameriprise involved financial planning services for clients. He wrote and implemented financial plans for his customers. Harari also reviewed each financial plan annually, and typically met with his customers on a quarterly basis, charging a flat fee for financial planning. He also received commissions on investment products he sold to advisory clients, mostly mutual funds and variable universal life products.

7. D. Harari has held general securities (Series 7), state agent (Series 63), and investment advisor (Series 65) licenses. He lives and worked in the San Antonio, Texas, area.

8. Although D. Harari is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Art. V, Sec. 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with a FINRA member, Inc., namely, January 31, 2013, and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

9. [REDACTED] has worked as an unregistered assistant to her husband at Ameriprise, Raymond James, and Girard Securities from July 2002 until January 31, 2013. She has never been registered.

10. Although [REDACTED] is no longer associated with a FINRA member, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Art. V, Sec. 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which she ceased to be associated with a FINRA member, namely, January 31, 2013, and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member.

FIRST CAUSE OF ACTION

**PROVIDING FALSE INFORMATION TO FINRA AND HIS FIRM
(Violation of FINRA Rules 8210 and 2010 by D. Harari)**

11. The Department realleges and incorporates by reference paragraphs 1-10 above.

The Loan from “MJG”

12. In approximately 2002, a woman referred to herein as “MJG” became a client of D. Harari. She and the Hararis became close friends in addition to maintaining a business relationship.

13. In January or February of 2008, D. Harari became severely ill, and spent most of the following two to three months in the hospital.

14. On February 28, 2008, MJG loaned [REDACTED] \$20,000.

15. Although [REDACTED] had promised to pay the loan back in April 2008, MJG did not attempt to collect the money for approximately one year.

16. When MJG asked to be repaid in 2009, D. Harari said he had paid it back through all the money he had made her on her investments, and told her to look at her account statements.

17. In July 2011, the Hararis finally began to repay the loan, giving MJG a check for \$1,000.

18. After MJG retained counsel in the spring of 2012, the Hararis agreed in writing to pay her back. [REDACTED] signed a promissory note for \$19,000 on June 13, 2012, and D. Harari guaranteed it.

19. As of the end of 2012, only \$1,000 of the \$19,000 evidenced by the promissory note had been paid.

The False Financial Planning Fees

20. MJG paid Ameriprise \$7,500 per year for D. Harari’s financial planning services.

21. On April 23, 2008, D. Harari induced MJG to pay him his planning fee directly, and she gave him a check for \$7,500 made out to cash.

22. In June 2010, D. Harari again induced MJG to pay him his planning fee directly.

23. To do so, MJG gave D. Harari a check made payable to D. Harari for \$3,500 on June 15, 2010. On June 21, 2010, she wrote out a check to herself in the amount of \$3,000 and endorsed it with the notation "David Harari" on the memo line, and gave the proceeds to D. Harari after cashing the check. On June 30, 2010, MJG wrote a \$1,000 check to cash, again with the notation "David Harari" on the memo line, and again gave the proceeds to D. Harari after cashing the check.

24. Despite making these payments to D. Harari, MJG still paid Ameriprise \$7,500 per year for D. Harari's services for the years beginning May 2007, May 2008, May 2009, and May 2010, and paid one-half the fee for the year beginning May 2011.

25. D. Harari never transmitted the funds he received directly from MJG to Ameriprise as payment of her fees.

Creation of False Documents

26. In December 2010, Ameriprise was investigating potential suitability issues in connection with D. Harari's business activities, and allowed him to resign from the firm.

27. FINRA opened an inquiry into the circumstances surrounding D. Harari's termination. As part of the inquiry, FINRA staff sent D. Harari a letter, pursuant to FINRA Rule 8210, requiring him to provide certain information and documents. The request asked for information as to the status of the loan from MJG, including whether the loan had been repaid, and the purpose and status of the certain checks given to D. Harari by MJG. The response was due by January 12, 2012.

28. D. Harari's employer at the time, Raymond James, raised concerns to D. Harari about the FINRA investigation.

29. On January 8, 2012, the Hararis went to MJG's home, where MJG and the Hararis agreed that MJG would sign a letter representing that the loan from MJG had been fully paid back to her, a representation the Hararis knew to be false.

30. The letter was written in an effort to avoid D. Harari losing his job with Raymond James.

31. D. Harari prepared the original handwritten draft of the letter, which MJG then typed, signed, and gave to D. Harari.

32. When the letter was written, D. Harari allegedly intended to pay the remaining \$19,000 back, even though the letter represented that it had already been repaid. Further, he told MJG during the meeting at her house on January 8, 2012 that she would be repaid. Finally, he gave her a signed, handwritten note stating that he owed her \$19,000, at the same time he had her write the contradictory letter.

33. The letter also falsely represented that the \$7,500 paid to Harari by MJG in 2010 had been for repayment of loans the Hararis had supposedly made to MJG.

34. The following day, [REDACTED] gave MJG a check for \$19,000, and four other checks totaling \$14,000, but told MJG not to cash the checks until [REDACTED] told her that the funds were available.

35. [REDACTED] dated the checks October 2011, which made it appear that they had been written, and the loan repaid, prior to the date of the January 8 letter.

36. [REDACTED] gave MJG the checks to support the representation that the loan had been repaid, with the expectation that they would be shown to Raymond James and possibly FINRA, if requested.

Providing False Information and Documentation to FINRA and Raymond James

37. D. Harari provided false information to FINRA in response to the Rule 8210 request letter described above and in testimony.

38. D. Harari responded to FINRA's request letter on January 19, 2012. In response to item 4, asking about the status of the loan and whether it was repaid, Harari wrote: "The loan has been repaid in full. SEE APPENDIX LETTER #2." Appendix #2, provided with the January 19, 2012 letter, was the falsified letter D. Harari had MJG sign on January 8, 2012.

39. D. Harari added an attachment to his response in which he restated that the "loan has been fully repaid."

40. At the time he wrote the January 19, 2012 response letter, D. Harari knew that the loan had not been repaid in full and that the letter and attachment were inaccurate.

41. D. Harari also replied falsely in the January 19, 2012 letter to FINRA in response to questions about the 2010 payments totaling \$7,500, asserting: "These checks were repayment of loans made to, or cashed for MJG." He again cited to the January 8, 2012 letter, which he attached as Appendix 2, which contained the false statement that the checks were for repayment of loans by the Hararis to MJG.

42. In his attachment to the January 19, 2012 letter, D. Harari again wrote that the payments were "checks she wrote out to cash for me to cash for her, or me as repayment for loans I made to her."

43. ██████ reviewed the January 19, 2012 letter before D. Harari sent it to FINRA.

44. D. Harari also provided the false and misleading January 8, 2012 letter to Raymond James in response to its internal inquiry regarding his dealings with MJG.

False Testimony

45. D. Harari testified under oath pursuant to FINRA Rule 8210 on November 15, 2012.

46. In his testimony, D. Harari specifically denied involvement in devising the wording of the January 8, 2012 letter or preparing a handwritten draft, testifying as follows:

Q Okay. Now, did you have any involvement in the wording of this letter?

A Not in the wording of it, but I was there, I was present.

* * *

Q Did you ever prepare a handwritten draft of this letter?

A No.

47. This testimony was false. D. Harari wrote a handwritten draft that is nearly a verbatim version of the January 8, 2012 letter signed by MJG. MJG used this handwritten draft to prepare the typed version of the letter that she signed.

48. By providing false information and documents in response to a FINRA Rule 8210 request for information, and by testifying falsely under oath pursuant to FINRA Rule 8210, D. Harari violated FINRA Rules 8210 and 2010.

49. By providing false information and documents to Raymond James in connection with its internal inquiry, D. Harari engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, thereby violating FINRA Rule 2010.

SECOND CAUSE OF ACTION

**PARTICIPATION IN CREATION OF FALSE DOCUMENTATION
TO BE PROVIDED TO FINRA AND OTHERS**

(Violation of FINRA Rule 2010 by [REDACTED])

50. The allegations of paragraphs 1-49 are repeated and realleged herein.

51. [REDACTED] participated in the creation of false documentation, including the January 8, 2012 letter and backdated checks described above, with the understanding and intention that they would be provided to Raymond James and FINRA to support the false assertion that she and her husband had repaid the loan from MJG.

52. By so doing, [REDACTED] engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, thereby violating FINRA Rule 2010.

THIRD CAUSE OF ACTION

OBTAINING MONEY BY FALSE PRETENSES

(Violation of NASD Rule 2110 and FINRA Rule 2010 by D. Harari)

53. The allegations of paragraphs 1-52 are repeated and realleged herein.

54. D. Harari induced MJG to pay him \$15,000 by falsely representing to her that the money represented the financial planning fees due for the services rendered by D. Harari through Ameriprise.

55. By so doing, D. Harari obtained money by false pretenses and thereby engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, thereby violating NASD Rule 2110 (for the 2008 conduct) and FINRA Rule 2010 (for the 2010 conduct).

FOURTH CAUSE OF ACTION

MISAPPROPRIATION/CONVERSION/MISUSE OF FUNDS

(Violation of NASD Rules 2330 and 2110 and
FINRA Rules 2150 and 2010 by D. Harari)

56. The allegations of paragraphs 1-55 are repeated and realleged herein.

57. D. Harari misappropriated and converted \$15,000 of funds that had been entrusted to him by MJG for the purpose of paying her financial planning fees, appropriating them for his own use instead of remitting them to Ameriprise.

58. By so doing, D. Harari engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, thereby violating NASD Rule 2110 (for the 2008 conduct) and FINRA Rule 2010 (for the 2010 conduct).

59. In addition, by misusing the funds entrusted to him by MJG, D. Harari violated NASD Rules 2330(a) and 2110 (for the 2008 conduct) and FINRA Rules 2150 and 2010 (for the 2010 conduct).

FIFTH CAUSE OF ACTION

FAILURE TO DISCLOSE TAX LIENS

(Violation of Art. V, Sec. 2 of FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010 by D. Harari)

60. The allegations of paragraphs 1-59 are repeated and realleged herein.

61. On November 30, 2007, the Internal Revenue Service filed a tax lien with the county clerk for Bexar County, Texas (in which the Hararis live) for tax years 2002-2005.

62. Additional liens were filed in June 2009 (for tax year 2007), October 2009 (for tax year 2006), and January 2010 (for tax year 2008).

63. D. Harari did not amend his Form U4 to disclose any of the tax liens, or disclose them on any amended U4 filings, until December 2010.

64. Art. V, Sec. 2 of FINRA's By-Laws requires that Forms U4 be kept current at all times, and requires the filing of an amendment within 30 days after learning the facts and circumstances giving rise to the amendment.

65. FINRA Rule 1122 and its predecessor, NASD IM-1000-1, prohibit members and associated persons from failing to correct registration filings that are incomplete or inaccurate.

66. By failing to amend his Form U4 to disclose the existence of the tax liens described above, D. Harari violated Art. V, Sec. 2 of FINRA's By-Laws, NASD IM-1000-1 (for conduct predating August 17, 2009), and FINRA Rule 1122 (for conduct on or after August 17, 2009). In addition, by violating those provisions, D. Harari violated NASD Rule 2110 (for conduct predating December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

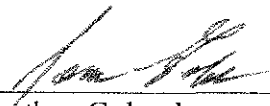
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed; and
- C. order that Respondents 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 4, 2013



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