

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD FAVATA  
(CRD No. 2668999),

Respondent.

Disciplinary Proceeding  
No. 2011027116201

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

April 17, 2012

**Respondent is suspended for 90 days from associating with any FINRA-registered firm in any capacity and fined \$5,000 for impersonating a former customer, in violation of FINRA Conduct Rule 2010.**

**Appearances**

UnBo Chung, Esq., for the Department of Enforcement.

No appearance by or on behalf of Donald Favata.

**DECISION**

**I. Introduction**

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on November 30, 2011. The Complaint alleges that Respondent Donald Favata (“Respondent”) violated FINRA Conduct Rule 2010 by impersonating a former customer at the request of the customer’s guardian when requesting disbursements from the customer’s variable annuity contract.

Respondent did not answer the Complaint. Accordingly, on February 27, 2012, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”). The Default

Motion is supported by the Declaration of UnBo Chung, Esq. (“Chung Decl.”) and five attached exhibits. Respondent did not respond to Enforcement’s Default Motion.

## **II. Procedural History**

Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to his residential address recorded in the Central Registration Depository (“CRD”) on November 30, 2011.<sup>1</sup> Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested. Respondent did not answer or otherwise respond to the Complaint.

On January 4, 2012, Enforcement served a Second Notice of Complaint on Respondent by mailing it to his CRD address.<sup>2</sup> Enforcement sent the Second Notice of Complaint by first-class certified mail, return receipt requested. Enforcement received the signed return receipt card.<sup>3</sup> However, the signature is illegible. The Second Notice of Complaint required Respondent to file an answer with the Office of Hearing Officers on or before January 23, 2012. To date, Respondent has not answered or otherwise responded to the Complaint.

Enforcement provided Respondent with valid constructive notice of this proceeding. Respondent defaulted by failing to answer the Complaint by the deadline specified in the Second Notice of Complaint.

## **III. Findings of Fact and Conclusions of Law**

Based on the Respondent’s default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

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<sup>1</sup> Chung Decl. ¶ 7.

<sup>2</sup> *Id.* ¶ 8.

<sup>3</sup> CX-5.

## **A. Background**

Respondent entered the securities industry in 1996. Respondent was associated with WRP Investments, Inc. (“WRP”) and registered with FINRA as a General Securities Representative and an Investment Company and Variable Contracts Products Representative from August 27, 2008, until April 1, 2011.<sup>4</sup>

WRP discharged Respondent because he misrepresented his identity several times to a variable annuity company in connection with his effort to withdraw funds from a former customer’s variable annuity contract.<sup>5</sup> FINRA’s investigation into the facts and circumstances of his discharge led to this disciplinary proceeding.

## **B. Jurisdiction**

FINRA has jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws. Enforcement filed the Complaint within two years after FINRA terminated Respondent’s registration, and the Complaint charges Respondent with misconduct that occurred while he was associated with a FINRA-registered firm.<sup>6</sup>

## **C. Impersonating Former Customer**

In February 2011, the legal guardian for FF contacted Respondent. FF was 83 years old and one of Respondent’s former customers. Respondent was advised that FF and his wife needed funds from FF’s variable annuity contract issued by Prudential Annuity Company. Specifically, FF and his wife needed an immediate \$40,000 lump sum withdrawal and then withdrawals of \$10,000 per month.<sup>7</sup>

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<sup>4</sup> Chung Decl. ¶ 5; Ex. 2.

<sup>5</sup> Ex. 2.

<sup>6</sup> See Article V, Sec. 4(a), FINRA By-Laws, *available at* [www.finra.org/Rules](http://www.finra.org/Rules) (then follow “FINRA Manual” hyperlink to “Corporate Organization: By-Laws”).

<sup>7</sup> Compl. ¶ 4.

On February 16, 2011, Respondent called Prudential and identified himself as FF. Respondent used FF's personal information, including his birth date, address, personal identification number, and the last four digits of his social security number, to authenticate himself as FF.<sup>8</sup> Respondent was not successful in processing the request for a withdrawal from FF's variable annuity.

Respondent called Prudential a fourth time on February 16, 2011, with FF on the call. On this call, Respondent identified himself as a registered representative with WRP. Respondent told the Prudential representative that he was calling as a friend of FF, not as his broker on the account. FF was able to answer Prudential's authentication questions and secure the requested withdrawals.<sup>9</sup>

On March 18, 2011, Prudential advised WRP that it suspected that Respondent had impersonated FF on the calls he made on February 16, 2011. WRP investigated this allegation. Respondent ultimately admitted that he had impersonated FF.<sup>10</sup> Respondent also provided FINRA with a written statement in which he admitted that he impersonated FF in an attempt to effect the requested withdrawals from FF's variable annuity contract.<sup>11</sup>

Respondent violated FINRA Conduct Rule 2010, which requires members, "in the conduct of [their] business, [to] observe high standards of commercial honor and just and equitable principles of trade."<sup>12</sup> The purpose of Rule 2010 is to protect investors from unethical

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<sup>8</sup> Compl. ¶ 5.

<sup>9</sup> *Id.* 7.

<sup>10</sup> *Id.* ¶ 8.

<sup>11</sup> Chung Decl. ¶ 12.

<sup>12</sup> Rule 2010 applies to Respondent through FINRA Rule 0140, which provides that persons associated with a member have the same duties and obligations as a member.

behavior.<sup>13</sup> “[I]t is well settled that [FINRA’s] disciplinary authority under Rule [2010] is broad enough to cover a wide range of unethical conduct.”<sup>14</sup> Here, Respondent misrepresented his identity when he called Prudential to request withdrawals from FF’s variable annuity contract. Such conduct runs afoul of Rule 2010’s high ethical standards.

#### **IV. Sanctions**

The FINRA Sanction Guidelines (“Guidelines”) do not specifically address the conduct at issue. However, the Guidelines for forging a customer’s signature to effect a transaction is instructive. The Guidelines for forgery and falsification of documents direct adjudicators to consider imposing a suspension for up to two years where mitigating factors exist, or a bar in egregious cases. The principal considerations in determining sanctions include: (i) the nature of the documents forged, and (ii) whether the respondent had a good-faith, but mistaken, belief of express or implied authority.<sup>15</sup> There are no mitigating facts in the record of this proceeding.

Enforcement recommends that Respondent be suspended for 90 days and fined \$5,000. In making this recommendation, Enforcement took into consideration that Respondent acted upon instructions from FF’s legal guardian and that Respondent did not stand to gain financially from the transaction. Based on these factors, the Hearing Officer concludes that Enforcement’s recommendation is an appropriate sanction in this case.

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<sup>13</sup> *Dep’t of Enforcement v. Shelley*, No. C3A050003, 2007 NASD Discip. LEXIS 8, at \*12 (NAC Feb. 15, 2007) (applying former NASD Rule 2110 that is identical to FINRA Rule 2010).

<sup>14</sup> *Dep’t of Enforcement v. Shelley*, 2007 NASD Discip. LEXIS 8, at \*12 (citing *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (concluding that Rule 2110 prohibits conduct that does not directly involve securities or the violation of a specific securities law) and *Daniel D. Manoff*, 55 S.E.C. 1161-63 (2002) (affirming NASD’s finding that respondent’s unauthorized use of a co-worker’s credit card numbers constituted unethical business conduct that violated Rule 2110)).

<sup>15</sup> FINRA Sanction Guidelines 37 (2011), [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

**V. Order**

Donald Favata is suspended for 90 days from associating with any FINRA-registered firm in any capacity and fined \$5,000 for impersonating a former customer, in violation of FINRA Conduct Rule 2010.

If this Decision becomes FINRA's final disciplinary action, the suspension shall commence at the opening of business on May 21, 2012, and shall run until August 19, 2012. The fine shall be due and payable when and if Donald Favata seeks to re-enter the securities industry.



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Andrew H. Perkins  
Hearing Officer

Copies to:

Donald Favata (*via overnight courier and first-class mail*)  
UnBo Chung, Esq. (*via electronic and first-class mail*)  
Mark P. Dauer, Esq. (*via electronic mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Donald Favata (CRD No. 2668999),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2011027116201

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. On February 16, 2011, Donald Favata (Favata) impersonated a former customer three times in telephone calls to a variable annuity company. Favata was instructed by the former customer's legal guardian to make a lump sum withdrawal and to set up monthly withdrawals from the former customer's variable annuity.

**RESPONDENT AND JURISDICTION**

2. Favata entered the securities industry in 1996 as an Investment Company Products/Variable Contracts Representative of a FINRA registered firm. On February 4, 2006, he became a General Securities Representative. Between the dates of August 27, 2008 and April 1, 2011, he was registered in these capacities with WRP Investments, Inc. (WRP). 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 after the effective date of termination of Respondent's registration with WRP, namely, April 1, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION**  
**Impersonation of a Customer (FINRA Rule 2010)**

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. In February 2011, Favata was contacted by the legal guardian of FF. FF was an 83 year-old man and was Favala's former customer. FF and his wife needed an immediate \$40,000 lump sum withdrawal and systematic \$10,000 monthly withdrawals from a variable annuity policy. The variable annuity was issued by Prudential Annuity Company (Prudential).
5. On February 16, 2011, Favata called Prudential three times. In each call, Favata identified himself as FF and used FF's personal information (including birthdate, the last four digits of his social security number, address and personal identification number) in an attempt to authenticate himself as FF. Prudential employees were suspicious and delayed the requests.
6. On the third call, Favata was transferred to Prudential's Investigation Unit. The Investigation Unit confronted Favata and Favata hung up.
7. On a fourth call (also on February 16, 2011), Favata called Prudential back with FF on the call. This time, Favata identified himself as a registered representative with

WRP. When Prudential noted that Favata was not the broker of record, Favata informed Prudential that he was only acting as a friend. FF was able to answer Prudential's customer authentication questions and the withdrawals were authorized and effected.

8. On March 18, 2011, Prudential informed WRP that it suspected that Favata impersonated FF. During WRP's investigation, Favata initially denied impersonating FF. The next morning after he denied impersonating FF, Favata recanted, and admitted impersonating FF.
9. By impersonating a former customer on calls with Prudential in an attempt to initiate withdrawals from the customer's variable annuity, and initially denying his actions to his firm during an internal investigation, Favata violated FINRA Rule 2010.

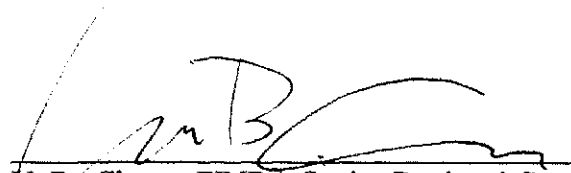
## **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violation 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 the 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 30, 2011



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