

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Richard A. McGuire (CRD No. 4637028),

Respondent.

DISCIPLINARY PROCEEDING
No. 20110273503

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During 2009 and 2010, Richard A. McGuire ("McGuire" or "Respondent"), while employed by TFS Securities, Inc. ("TFS") and Ameritas Investment Corp. ("Ameritas"), converted a total of approximately \$95,000 from former Customer MP by misrepresenting that two purported investments of \$60,000 and \$35,000 were for the purchase of products similar to annuities and issued by a company called Revolutionary Asset Management, LLC ("RAM"). In fact, RAM was a business owned and controlled by Respondent and the checks provided by Customer MP were deposited in a RAM bank account that Respondent controlled. The funds deposited were used by Respondent to pay for personal expenses and to benefit his unapproved outside business. When Customer MP asked to withdraw a portion of her \$95,000 investment in or about April 2011, Respondent forged her name on two falsified loan agreements purporting to reflect loans of \$60,000 and \$35,000 allegedly made to RAM by Customer MP in November

2009 and November 2010, respectively. By the foregoing conduct, Respondent violated FINRA Rule 2010.

2. At different times between 2006 and 2011, Respondent failed to notify four FINRA-regulated broker dealer employers of his activities related to three outside businesses, including RAM in violation of NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010.

3. Between 2009 and 2011, Respondent also failed to make written notification to various FINRA-regulated broker dealer employers of two securities accounts he maintained – one in his own name and one in RAM’s name – at other brokerage firms in violation of NASD Rule 3050 and FINRA Rule 2010. Respondent also failed during 2011 to file Forms U-4 and Amended Forms U-4 to disclose unsatisfied state and federal tax liens in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.

RESPONDENT AND JURISDICTION

4. Respondent entered the securities industry in February 2003 as a Limited Registered Representative with a FINRA-regulated broker dealer. He has since been associated with five other FINRA-regulated broker dealers including, MML Investor Services, Inc. (“MML”), TFS Securities, Inc. (“TFS”), Ameritas Investment Corp. (“Ameritas”) and Investacorp, Inc. (“Investacorp”). Respondent obtained his Series 6 and Series 63 securities licenses in February 2003 and April 2003, respectively. In April 2005, he also obtained his Series 7 securities license.

5. Respondent is presently associated with a FINRA-regulated broker dealer and remains subject to FINRA’s jurisdiction.

**FIRST CAUSE OF ACTION
CONVERSION
(FINRA RULE 2010)**

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.

7. FINRA Rule 2010 provides that, “A member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.” This Rule replaced NASD Rule 2010 on December 15, 2008.

Customer MP

8. In 2009, Customer MP was a retired, 59-year-old artist who was single and lived alone. From March 2006 through at least December 2007, Customer MP held a securities brokerage account at MML for which Respondent served as the assigned limited registered representative. In or about December 2007, Customer MP ceased being a securities customer of Respondent.

9. After December 2007, Respondent continued to advise Customer MP regarding financial matters and occasionally visited her in her home.

10. During 2009 and 2010, Respondent was aware that Customer MP had more than \$1.5 million in available assets. During this same time period, Respondent was experiencing financial difficulties.

Revolutionary Asset Management

11. In or about March 2006, Respondent formed RAM as a domestic limited liability company in the State of New York. Respondent is the sole owner and president of RAM, an

alleged marketing and consulting business. As of March 19, 2013, RAM remained listed as an active limited liability company on the New York State Division of Corporations website.

12. In or about March 2006, Respondent opened a checking account at ABC Bank in RAM's name. Respondent had exclusive control over the RAM bank account. The RAM bank account was the only checking account Respondent held in RAM's name during 2009 and 2010.

13. During 2009 and 2010, Respondent also maintained a credit card in RAM's name. Respondent was the only authorized user of this credit card.

14. During 2009 and 2010, Respondent regularly used the RAM bank account and the RAM credit card to conduct RAM business and charge and pay for personal expenses unrelated to the business. The payments/charges made in the RAM bank account and credit card during 2009 and 2010 included restaurants, nightclubs, liquor stores, spas, gas, airline tickets, hotel stays, pet care, medical equipment, supermarkets and craft stores.

Conversion

15. During one of his visits to Customer MP's home in or about November 2009, Respondent recommended that Customer MP make an investment with RAM. Customer MP believed she was purchasing an annuity similar to the one she had previously purchased through Respondent during his employment with MML.

16. In or about November 3, 2009, Customer MP wrote a personal check for \$60,000 made payable to RAM which she provided to Respondent. The memo section of the check bore the notation, "investment." Customer MP did not sign any other documents related to her \$60,000 investment. Customer MP never received copies of any documents in connection with this RAM investment.

17. On or about November 5, 2009, Respondent deposited the \$60,000 check he received from Customer MP into the RAM bank account.

18. The RAM bank account statements for November 3, 2009 through December 31, 2009 reflect approximately \$5,600 in fund transfers to Respondent's wife and approximately \$5,900 in ATM and other withdrawals.

19. During 2009 and 2010, Respondent also maintained a personal checking account with ABC Bank. The RAM bank account statements for November 3, 2009 through December 31, 2009 reflect the transfer of approximately \$17,500 from the RAM bank account to Respondent's personal ABC Bank checking account.

20. During 2009 and 2010, Respondent had outstanding in his personal capacity a mortgage loan held by ABC Bank. During this period Respondent also had overdraft protection tied to his personal ABC Bank checking account. The RAM bank account statement for November 2009 reflects loan payments totaling approximately \$6,200. The RAM bank account statement for December 2009 reflects a mortgage payment of about \$2,700.

21. During another of his visits to Customer MP in or about November 2010, Respondent recommended that she make a second \$35,000 investment in RAM. Customer MP believed this proposed investment to be another annuity investment.

22. On or about November 5, 2010, Customer MP wrote a personal check for \$35,000 made payable to RAM which she provided to Respondent. Customer MP did not sign any other documents in connection with the \$35,000 investment. Customer MP never received copies of any documents in connection with this RAM investment.

23. On or about November 8, 2010, Respondent deposited the \$35,000 check he received from Customer MP into the RAM bank account.

24. The RAM bank account statements for November 5, 2010 through December 31, 2010, reflect approximately \$1,000 in fund transfers to Respondent's wife and approximately \$15,000 in ATM and other withdrawals.

25. The RAM bank account statements for November 5, 2010 through December 31, 2010 reflect loan payments totaling approximately \$1,000.

26. Customer MP did not receive account statements of any kind in connection with either her \$60,000 or her \$35,000 RAM investment.

27. In or about April 2011, Customer MP asked Respondent to withdraw funds from her RAM investments. Respondent declined to do so advising her that a withdrawal would result in the assessment of severe financial penalties.

28. By the conduct described above, Respondent converted \$95,000 from Customer MP.

29. The acts, practices and conduct described above constitute separate and distinct violations of FINRA Rule 2010.

**SECOND CAUSE OF ACTION
FORGERY
(FINRA RULE 2010)**

30. The Department realleges and incorporates by reference paragraphs 1 through 29 above.

31. In or about May 2011, in response to FINRA inquiries, Respondent provided to FINRA copies of two documents, each entitled "Loan Agreement."

32. The first alleged loan agreement, dated November 2009, identifies Customer MP as the “lender” and RAM as the “borrower” and reflects Customer MP’s purported loan of \$60,000 to RAM to be repaid in 120 installments at 5% interest beginning in November 2011 (the “November 2009 Loan Agreement”).

33. Respondent forged or caused to be forged the signature of Customer MP on the November 2009 Loan Agreement.

34. The second alleged loan agreement, dated November 2010, identifies Customer MP as the “lender” and RAM as the “borrower” and reflects Customer MP’s purported loan of \$35,000 to RAM to be repaid in 120 installments at 4% interest beginning in November 2012 (the “November 2010 Loan Agreement”).

35. Respondent forged or caused to be forged the signature of Customer MP on the November 2010 Loan Agreement.

36. Customer MP never made any loans to Respondent and/or RAM.

37. The acts, practices and conduct described above constitute separate and distinct violations of FINRA Rule 2010.

**THIRD CAUSE OF ACTION
OUTSIDE BUSINESS ACTIVITIES
(NASD RULES 3030 AND 2110, NASD RULES 3030 AND FINRA RULE 2010, AND FINRA
RULES 3270 AND 2010)**

38. The Department realleges and incorporates by reference paragraphs 1 through 37 above.

39. A chart summarizing Respondent’s unapproved outside business activities and his respective FINRA-regulated broker dealer employers is annexed hereto as Exhibit 1.

Freedom Mortgage

40. NASD Rule 3030 prohibits any person associated with a member in any registered capacity from accepting employment or accepting compensation from any other person as a result of a business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.

41. NASD Rule 2110 provides that, "A member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade."

42. In or about May 2006 Respondent became an independent contractor with Freedom Mortgage, a privately held, full-service residential lender. Respondent was licensed and contracted to write mortgages for Freedom Mortgage. Respondent remained an independent contractor for Freedom Mortgage until at least 2009.

43. During 2006 and 2007, Respondent received compensation in connection with his business activities with Freedom Mortgage in both an individual capacity and in his capacity as the sole owner and president of RAM.

44. In 2006, Respondent received from Freedom Mortgage \$24,000 in compensation.

45. In 2006 and 2007, Respondent also received compensation from Freedom Mortgage, through payments made to RAM, \$79,000 and \$139,500, respectively.

46. Beginning in July 2005 through on or about December 21, 2007, Respondent was a limited registered representative and independent contractor with MML, a FINRA-regulated broker dealer.

47. During 2006 and 2007, Respondent participated in business activities related to Freedom Mortgage without providing prompt written notice to MML, his FINRA-regulated broker dealer employer.

48. As to conduct occurring from in or about May 2006 through on or about December 21, 2007, Respondent's failure to provide prompt written notice to MML, his FINRA-regulated broker dealer employer, of his business activities in Freedom Mortgage constitutes a violation of NASD Rules 3030 and 2110.

Revolutionary Asset Management

49. FINRA Rule 3270 prohibits any registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or being compensated, or having the reasonable expectation of compensation, from another person as a result of any business activity outside the scope of the relationship with his FINRA-regulated broker dealer employer, unless he or she has provided prior written notice to his FINRA-regulated broker dealer employer. This rule became effective December 15, 2010 and replaced NASD Rule 3030.

50. As noted above, Respondent incorporated RAM as a limited liability company in New York State in or about March 2006. Respondent is the sole owner and the president of RAM.

51. From 2006 through at least 2012, Respondent was a sole proprietor, employee and officer of RAM. From 2006 through at least 2010 Respondent received and/or expected to receive compensation for his activities related to RAM.

52. Beginning in 2006 through at least 2010, Respondent listed RAM as a "Sole Proprietorship" on Schedule C of his U.S. Individual Income Tax Returns. In each filing, RAM's principal business was described as "insurance sales and mortgage broker."

53. Respondent's U.S. Individual Income Tax Returns for 2006 through 2009 reflect profits earned by RAM in each of those years as follows: \$30,176 in 2006; \$45,192 in 2007; \$15,597 in 2008; and \$4,023 in 2009.

54. Respondent's U.S. Individual Income Tax Returns for 2010 reflects that RAM incurred losses during 2010 totaling \$25,491.

55. Beginning on or about July 26, 2005 through on or about December 21, 2007, Respondent was a limited registered representative and independent contractor with MML, a FINRA-regulated broker dealer.

56. During 2006 and 2007, Respondent participated in business activities related to RAM as described above without providing prompt written notice to MML, his FINRA-regulated broker dealer employer.

57. As to conduct occurring from in or about March 2006 through December 21, 2007, Respondent's failure to provide prompt written notice to MML of his RAM related business activities constituted a violation of NASD Rules 3030 and 2110.

58. Beginning in May 2008 through on or about December 21, 2009, Respondent was a limited registered representative and independent contractor with TFS, a FINRA-regulated broker dealer.

59. During 2008 and 2009, Respondent participated in business activities related to RAM as described above without providing prompt written notice to TFS, his FINRA-regulated broker dealer employer.

60. As to conduct occurring from on or about May 1, 2008 through on or about December 14, 2008, Respondent's failure to provide prompt written notice to TFS of his RAM related activities constitutes a violation of NASD Rules 3030 and 2110.

61. As to conduct occurring from on or about December 15, 2008 through on or about December 21, 2009, Respondent's failure to provide prompt written notice to TFS of his RAM related activities constitutes a violation of NASD Rules 3030 and FINRA Rule 2010.

62. Beginning on or about December 11, 2009 through on or about April 27, 2011, Respondent was a limited registered representative and independent contractor with Ameritas, a FINRA regulated broker dealer.

63. During 2009, 2010 and 2011, Respondent participated in business activities related to RAM as described above without providing prompt and/or prior written notice to Ameritas, his FINRA regulated broker dealer employer.

64. As to conduct occurring from on or about December 11, 2009 through on or about December 14, 2010, Respondent's failure to provide prompt written notice to Ameritas of his RAM related activities constitutes a violation of NASD Rule 3030 and FINRA Rule 2010.

65. As to conduct occurring from on or about December 15, 2010 through on or about April 27, 2011, Respondent's failure to provide prompt and/or prior written notice to Ameritas of his RAM related activities constitutes a violation of FINRA Rules 3270 and 2010.

66. Beginning on or about June 20, 2011 through on or about December 5, 2012, Respondent was a limited registered representative and independent contractor with Investacorp, a FINRA regulated broker dealer.

67. During 2011 and 2012, Respondent participated in business activities related to RAM as described above without providing prior written notice to Investacorp, his FINRA regulated broker dealer employer.

68. As to conduct occurring from on or about June 20, 2011 through on or about December 5, 2012, Respondent's failure to provide prompt and/or prior written notice to Investacorp of his RAM related activities constitutes a violation of FINRA Rules 3270 and 2010.

SSU Consultants

69. In or about November 6, 2007, SSU Recovery, Inc. was incorporated in the State of New York as a domestic business corporation. In or about August 25, 2008, the corporate name of SSU Recovery, Inc. was changed to SSU Consultants, Inc. ("SSU"). Respondent is the Chairman or Chief Executive Officer of SSU Consultants, Inc. ("SSU"). As of March 6, 2013, SSU remained listed as an active domestic business corporation on the New York State Division of Corporations website.

70. In or about December 2009, Respondent provided written notice to Ameritas of his business activities related to SSU. In the Outside Business Activity Form received by Ameritas, Respondent described himself as "President/CEO" of SSU. The Outside Business Activity Form further described the nature of SSU's business as "credit repair, lend modifications, debt settlement."

71. On or about December 7, 2009, Respondent opened a brokerage account in his name with Broker Dealer XYZ, a FINRA-regulated broker dealer. The online application submitted in connection with this account listed Respondent's employer as SSU.

72. In 2009, SSU issued to Respondent a Form 1099 reporting miscellaneous income paid to Respondent by SSU in the amount of \$9,175.

73. In 2009, SSU issued to RAM a Form 1099 reporting miscellaneous income paid to RAM by SSU in the amount of \$22,000.

74. During November 2007 and through on or about December 21, 2007, Respondent was a limited registered representative and independent contractor with MML.

75. During November and December 2007, Respondent participated in business activities related to SSU without providing prompt written notice to MML, his FINRA regulated broker dealer employer.

76. As to conduct occurring from in or about November 2007 through on or about December 21, 2007, Respondent's failure to provide prompt written notice to MML of his SSU related business activities constituted a violation of NASD Rules 3030 and 2110.

77. Beginning on or about May 1, 2008 through on or about December 21, 2009, Respondent was a limited registered representative and independent contractor with TFS.

78. During 2008 and 2009, Respondent participated in business activities related to SSU as described above without providing prompt written notice to TFS, his FINRA-regulated broker dealer employer.

79. As to conduct occurring from on or about May 1, 2008 through on or about December 14, 2008, Respondent's failure to provide prompt written notice to TFS of his SSU related activities constitutes a violation of NASD Rules 3030 and 2110.

80. As to conduct occurring from on or about December 15, 2008 through on or about December 31, 2009, Respondent's failure to provide prompt written notice to TFS of his SSU related activities constitutes a violation of NASD Rules 3030 and FINRA Rule 2010.

81. Beginning on or about June 20, 2011 through on or about December 5, 2012, Respondent was a limited registered representative and independent contractor with Investacorp.

82. During 2011 and 2012, Respondent remained an officer or director of SSU without providing prior written notice to Investacorp, his FINRA regulated broker dealer employer.

83. As to conduct occurring from on or about June 20, 2011 through on or about December 5, 2012, Respondent's failure to provide prior written notice to Investacorp of his SSU related activities constitutes a violation of FINRA Rules 3270 and 2010.

84. The acts, practices and conduct described above constitute separate and distinct violations of NASD Rules 3030 and 2110 and/or NASD Rule 3030 and FINRA Rule 2010; and/or FINRA Rules 3270 and 2010.

**FOURTH CAUSE OF ACTION
UNDISCLOSED BROKERAGE ACCOUNTS
(NASD RULE 3050 AND FINRA RULE 2010)**

85. The Department realleges and incorporates by reference paragraphs 1 through 84 above.

86. NASD Rule 3050 requires persons associated with a FINRA-regulated broker dealer, prior to opening an account with another FINRA-regulated broker dealer or placing an initial order for the purchase or sale of securities, to notify both entities in writing of his association with the other. If the account was established prior to his association with a FINRA-regulated broker dealer employer, then NASD Rule 3050 requires associated persons to notify both entities promptly after becoming employed by a FINRA-regulated broker dealer. NASD Rule 3050(e) extends application of this rule to any account in which an associated person has a financial interest or discretionary authority.

Brokerage Account 1 – Broker Dealer XYZ

87. On or about December 7, 2009, Respondent opened a brokerage account in his name at Broker Dealer XYZ, a FINRA regulated broker dealer.

88. At the time his Broker Dealer XYZ account was opened, Respondent was employed by TFS.

89. The Broker Dealer XYZ on-line application lists the correct mailing address, social security number and date of birth for Respondent.

90. As noted above, Respondent listed his employer as SSU on the Broker Dealer XYZ on-line application.

91. In response to a question on the Broker Dealer XYZ on-line application, "Employer a broker/dealer?" Respondent answered, "No."

92. On or about December 7, 2009, \$1,500 was transferred from the RAM ABC Bank account to the Broker Dealer XYZ brokerage account. On the same date, \$1,500 was transferred back from the bank affiliate of the Broker Dealer XYZ brokerage account to the RAM ABC Bank account.

93. On or about December 8, 2009, \$2,000 was transferred from the RAM bank account to the bank affiliate of the Broker Dealer XYZ brokerage account and back again.

94. The Broker Dealer XYZ account remained open until on or about February 10, 2010.

95. Beginning on or about December 11, 2009 through April 27, 2011, Respondent was a limited registered representative and independent contractor for Ameritas.

96. Respondent never provided written notice to Broker Dealer XYZ of his association with TFS or Ameritas.

97. Respondent never provided written notice to TFS or Ameritas of his brokerage account with Broker Dealer XYZ.

Brokerage Account 2 – Broker Dealer EFG

98. On or about January 13, 2011, Respondent opened a brokerage account in RAM's name at Broker Dealer EFG, a FINRA regulated broker dealer. Respondent was the only signatory on the RAM Broker Dealer EFG brokerage account and the only person with authority to direct trading in the RAM Broker Dealer EFG brokerage account. The RAM Broker Dealer EFG brokerage account remained open until at least September 29, 2011.

99. Respondent did not respond to a question on the RAM Broker Dealer EFG new account form which asked whether he was "affiliated with or employed by, a stock exchange or member firm or either an exchange, FINRA, or municipal securities Broker/Dealer."

100. On or about January 14, 2011, 50,000 shares of Peoplestring Corp, a penny stock, were received in the RAM Broker Dealer EFG brokerage account. Thereafter, Respondent continued buying and selling penny stocks in the RAM Broker Dealer EFG brokerage account through at least June 2011.

101. From January 2011 until April 27, 2011, Respondent was a limited registered representative and independent contractor with Ameritas. Beginning on June 20, 2011 through December 5, 2012, Respondent was a limited registered representative and independent contractor with Investacorp.

102. Respondent never provided written notice to Broker Dealer EFG of his association with Ameritas or Investacorp.

103. Respondent never provided written notice to Ameritas or Investacorp of his Broker Dealer EFG brokerage account.

104. The acts, practices and conduct described above constitute separate and distinct violations of NASD Rules 3050 and FINRA Rule 2010.

**FIFTH CAUSE OF ACTION
WILLFUL FAILURE BY RESPONDENT TO DISCLOSE
MATERIAL INFORMATION ON HIS FORM U4
(ARTICLE V, SECTION 2(C) OF FINRA'S BY-LAWS, AND FINRA RULES 1122 AND 2010)**

105. The Department realleges and incorporates by reference paragraphs 1 through 104 above.

106. Article V, Section 2(c) of the FINRA By-Laws requires that "[e]very application for registration filed with [FINRA] shall be kept current at all times by supplementary amendments" and that "[s]uch amendment to the application shall be filed with [FINRA] not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

107. FINRA Rule 1122 prohibits filing with FINRA information regarding registration "which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

108. On or about May 20, 2010 and September 16, 2010, New York State tax liens in the amounts of \$445 and \$1,256 were filed against Respondent. Both of these liens were satisfied on or about May 25, 2012.

109. On or about May 4, 2010, a federal tax lien in the amount of \$21,167 was filed against Respondent. This lien remained unsatisfied as of March 6, 2013.

110. Respondent was aware of the unsatisfied tax liens on or before June 2011.

111. In or about May 2011, in connection with his employment with Investacorp and with seeking reinstatement of his life and variable products licensing, Respondent responded in writing to inquiries regarding his poor credit rating and outstanding tax liens.

112. Also in connection with his employment with Investacorp, Respondent completed and executed a handwritten Form U-4 dated June 9, 2011 ("Respondent's Form U-4"). This Form U-4 was filed by Investacorp in or about June 20, 2011.

113. Question No. 14M of Respondent's Form U-4 asked, "Do you have any unsatisfied judgments or liens against you?" Respondent answered, "No" to this question.

114. Thereafter, on June 27, 2011, July 18, 2011, October 31, 2011 and August 8, 2012, Amended Forms U-4 were filed by Investacorp on Respondent's behalf. In each instance, the Form U-4 indicated "No" in response to question 14M inquiring about the existence of unsatisfied judgments or liens against him.

115. The existence of the unsatisfied tax liens was a material fact.

116. Respondent's failure to file and amend his Form U-4 to disclose the unsatisfied tax lien in response to Question 14M on the above-referenced Forms U-4 was willful.

117. The acts, practices and conduct described above were in contravention of Article V, Section 2(c) of FINRA's By-Laws and constitute separate and distinct violations of FINRA Rules 1122 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) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the Fifth Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 5/8/13



Josefina Martinez
Senior Counsel
Richard Chin
Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
(646) 315-7372
josefina.martinez@finra.org

Exhibit 1

Richard McGuire: Time-Line of Unapproved Outside Business Activities

